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56th Congress, 1st Session. | HOUSE OF REPRESENTATIVES. | Report No. 1999.

CŒUR D'ALENE LABOR TROUBLES.

June 5, 1900.—Ordered to be printed.

Mr. Dick, from the Committee on Military Affairs, submitted the following

REPORT.

[SYLLABUS.]

On the 29th of April, 1899, and for some time prior thereto, the miners' unions at Mullan, Burke, Gem, and Wardner, constituting a large part of the mining community of the Cœur d'Alenes, held secret and largely attended meetings; and on the morning of the 29th of April the several unions held meetings at their halls and distributed firearms and masks. The Burke union, about 200 strong, seized a Northern Pacific train and proceeded to Gem, where from 150 to 200 members of the Gem union joined them, seized some 80 boxes of powder belonging to the Helena-Frisco Mining Company, then proceeded to Wallace, where they were joined by the Mullan union, about 200 strong, which had marched over from Mullan to Wallace in time to intercept said train, obtaining numerous firearms which had been concealed along the roadside, and thence proceeded to Wardner, where they destroyed property aggregating $250,000 and murdered two men and wounded the third. This was accomplished with military precision under direct command of leaders, and without delay, from which fact and from the evidence adduced at the Corcoran trial it is found that there existed in the mining district of the Cœur d'Alenes a widespread, deep-seated, and thoroughly organized conspiracy.

Shoshone County, Idaho, has been in a state of insurrection since 1892, and during that time the courts have not been in the free and unobstructed exercise of their functions and justice has not been administered.

A violent state of insurrection and riot culminated in Shoshone County, Idaho, on April 29, 1899, resulting in the destruction of life and property, at a time when the legislature could not have been convened to meet the emergency. No riot has occurred there since said date, solely because of the presence of the United States military forces.

Under the circumstances the governor of Idaho was warranted in making application to the President for troops to aid the civil authorities in executing the laws of the State.

It is conceded on all sides that the President of the United States was justified in sending troops to Shoshone County, Idaho, in response to the application of the governor.

Since October, 1899, the troops, not over 200 in number, have performed no duty in enforcing martial law or guarding prisoners, and the prison has been torn down. The troops are now in garrison in Osborne, 8 miles from the scene of the riot. They are there at the official request of the governor of Idaho, supported by a petition signed by 1,500 citizens of that community.

Under the conditions prevailing in Shoshone County in May, 1899, it was not necessary for the President to proclaim martial law under section 5300, Revised Statutes of the United States, and he did not declare martial law.

None of the charges preferred against the United States Army and its officers in

Idaho, as set forth in the various paragraphs of the resolution, have been sustained by the testimony.

The military force in Shoshone County, under command of General Merriam, was used strictly in aid of the civil authorities. The sheriff and other county officials were in collusion with the rioters, and therefore civil authority could not be enforced. Some of the county officials were afterwards duly removed from office by judicial process because of said collusion and malfeasance in office.

The United States Army and its officers acted strictly within their instructions and the law.

President McKinley and the War Department exercised every precaution that the military act solely within the Constitution and not encroach in the distinct sphere of the civil authorities. The President exhibited his deep interest and solicitude in the cause of labor by his instruction "that the military must have nothing whatever to do with enforcing rules for the government of miners or miners' unions."

The writ of habeas corpus was not suspended in Soshone County by the governor in 1899. The supreme court of Idaho refused to issue the writ on the facts presented, and the finding of the highest court of the State on this point, not having been reversed, is binding on this committee.

The proof is positive that the "right of free speech, free press, and peaceable assemblages" were not denied to the peaceable citizens of that community by the use of military power.

The so-called "permit system" is an extreme measure, devised and administered by the State authorities alone, and which they justify by the necessities of martial law. It was not directed against organized labor, but against the criminal members of certain organizations masquerading under the cloak of organized labor, who have for years conducted a reign of terror and lawlessness in the Cœur d'Alene mining district of that county.

The prisoners confined in the temporary prison in Shoshone County were civil prisoners under guard of the military forces. The military commander was authorized to enforce prison discipline against prisoners violating prison rules. The punishments inflicted were not excessive, and the treatment of the prisoners by the soldiers was humane and considerate.

As to all other charges in the resolution not hereinbefore referred to, reference is made to the statement hereinafter set forth.

Martial law and the administration of justice by civil courts can proceed side by side in a community which is in a state of insurrection and riot when the courts can not perform their proper functions without military protection.

Martial law ceases when the necessity for it ceases. It ceases when the civil authorities resume their unobstructed functions, although the military may be present to aid them if the need of such aid should arise.

When the United States Army is called upon to protect the State against "domestic violence," the military forces act in aid of the State authorities to the extent that the purpose is to reestablish the civil authorities; but the military forces of the United States are not under the command of the State authorities, but of the military officers, under the President. To this extent it is an independent force, operating under the order of the President to perform the guaranty imposed upon the United States by the Constitution.

The Committee on Military Affairs, to which was referred the resolution (H. Res. No. 31) on the conduct of the United States Army and its officers in Idaho, submits the following report:

On the 8th day of December, 1899, Mr. Lentz introduced House resolution No. 31, to provide a committee to investigate the conduct of the United States Army and its officers in Idaho, which, as amended, was adopted January 8, 1900. Said resolution reads as follows:

> Whereas it is a matter of general information given out by the public press and charged by the industrial organization known as the Western Federation of Miners that United States troops have been sent into the State of Idaho in defiance of and contrary to the provisions of Article IV, section 4, of the Constitution of the United States, in that it was done at the individual request of the governor of Idaho, without the authority of the legislature, and at a time when there was no condition of insurrection or riot, and when the legislature could have been called together without danger or delay from any source whatever; and, further, without even consulta-

tion by the governor with the sheriff of Shoshone County, where it was desired that the troops should be, and actually were, sent; and

Whereas, in defiance of section 9, Article I, of the Constitution, martial law was declared and the writ of habeas corpus suspended in said county in a time of profound peace, when there was no condition of rebellion or invasion or any menace to the public safety; and

Whereas it is charged that Brig. Gen. H. C. Merriam, commanding the troops in Shoshone County, arbitrarily and without warrant of law, without informing the accused of the charge upon which they were arrested, and in defiance of the sixth amendment to the Constitution, arrested and imprisoned hundreds of citizens of the United States and of the State of Idaho, and held them prisoners under the most brutal and tyrannical conditions, denying to them their constitutional right to speedy trial by an impartial jury of the State, which right the Constitution clearly guarantees; and

Whereas it is charged that the said Brig. Gen. H. C. Merriam did, in defiance of and contrary to the provisions of the fourth amendment of the Constitution, subject the persons, houses, papers, and effects of citizens to unreasonable and arbitrary search and seizure; and

Whereas it is charged that the said military commander arbitrarily and in defiance of the civil law ordered the arrest of the sheriff of the county and the board of county commissioners, and subsequently deposed them from office on the unproved pretext of neglect of duty; and

Whereas it is charged that the said Brigadier-General Merriam, immediately upon the arrival of the troops, ordered the arrest of every man who was a member of the miners' union, and also of all citizens who were supposed to sympathize with the cause of organized labor; and

Whereas it is charged that those citizens were imprisoned in what was known as the "bull pen," a place unfit for human habitation, and that so brutal and degrading was the treatment inflicted on these prisoners by Brigadier-General Merriam and the United States troops under his orders that one unfortunate man became insane, and upon being taken to the county jail he broke from his guards and jumped into the river, and a negro soldier, at the command of the Bunker Hill Mining Company's doctor, fired three shots at him and he was dragged from the river dead, and that another unfortunate prisoner, dying in the "bull pen," begged for a priest and his dying request was denied; and

Whereas the imprisoned citizens were denied opportunity to confer with their counsel or members of their families and were denied the right of speedy and impartial trial; were held in this vile and inhuman imprisonment for several months without charge or indictment against them, although two sessions of the grand jury were held in the meantime, and during their confinement were treated by the officers and soldiers of the United States Army as convicted felons and compelled to work at penal employment; were subjected to cruel and degrading punishments, such as being compelled to sleep on bare boards, placed on a diet of bread and water for ten days, and compelled to stand erect seven hours each day in the hot sun under penalty of death if they attempted to move or sit down (these two latter unlawful punishments were inflicted upon them by the orders of Captain Edwards, United States Army, who amused himself by calling the prisoners "cowardly curs"); and

Whereas it is charged that by the use of the military power the writ of habeas corpus was suspended for months in Shoshone County, and the right of free speech, free press, and peaceable assemblages were denied to the peaceable citizens of that community without any excuse or justification whatever; and

Whereas when the Industrial Commission sat in Wallace all union men who had been long residents of the county were in the "bull pen" and had no opportunity to appear before the commission; others were arrested while on their way to Wallace to appear before the commission, and thrown into the "bull pen" until after the commission adjourned; and

Whereas it is charged that the following proclamation, in gross violation of the Constitution of the United States and of the constitution and statutes of the State of Idaho, was issued and enforced by Brigadier-General Merriam, to wit:

"PROCLAMATION.

"Whereas the following notice has been served upon the mine owners of Shoshone County by the duly constituted State authorities, by whom martial law has been declared, to wit:

"'*To the mine owners of Shoshone County:*

"'Certain organizations or combinations existing in Shoshone County have shown themselves to be criminal in purpose, inciting and, as organizations, procuring property to be destroyed and murders to be committed, by reason whereof it has been twice necessary to declare martial law in Shoshone County.

"'You are therefore notified that the employment of men belonging to said or other criminal organizations during the continuance of martial law must cease. In case this direction is not observed your mines will be closed.'

"Therefore, in order to carry into effect the spirit of the foregoing notice and restore the industries of the district as far as possible, it becomes necessary to establish a system by which miners who have not participated in the recent acts of violence, and who are law-abiding people, may obtain work, and, that order and peace may be established, the following is promulgated for the guidance of all mine owners and employees in the affected district:

"All parties applying for underground work in any of the following mines will be required to obtain from Dr. Hugh France, the duly appointed and authorized agent for the State of Idaho for this purpose, or his deputy, at Wardner or at Wallace, a permit authorizing said person to seek employment in any of the following mines: Bunker Hill and Sullivan, Last Chance, Empire State-Idaho, Consolidated Tiger and Poorman, Hecla, Mammoth, Standard, Helena-Frisco, Gem, Morning, Hunter, and such others as may be hereafter included in the above list. Parties applying for such permits must be prepared: First, to deny all participation in the riots of April 29, 1899, in Shoshone County, and, second, to deny or renounce membership in any society which has incited, encouraged, or approved of said riots or other violation of public law.

"Mine owners must refuse employment to all applicants for underground work who do not present a duly signed permit authorizing the same. Such permit will be deposited in mine owners' office subject to periodical inspection.

"All parties now under employment by any of the mines above named will be required to procure, within ten days from this date, the permits above referred to as a condition to their remaining in the service of their respective companies.

"By order of the governor and commander in chief:

"Bartlet Sinclair, *State Auditor.*

"Examined and approved:

"H. C. Merriam,
"*Brigadier-General United States Army.*

"Dated May 8, 1899.

"The application for permits to seek employment which union men must sign is as follows:

"'APPLICATION FOR LEAVE TO SEEK EMPLOYMENT IN THE MINES OF SHOSHONE COUNTY.

"'To Dr. Hugh France, *State representative.*

"'Sir: I hereby make application for issuance to me of a permit allowing me to seek employment in the mines of Shoshone County.

"'I am a ——— by occupation.

"'I am a native of ——— and am a ——— citizen of the United States.

"'I last worked at the ——— mine in ———.

"'My shift boss was ———.

"'Heretofore I have been a member of ——— Miners' Union.

"'I did not participate actively or otherwise in the riots which took place at Wardner on the 29th of April, 1899. Believing that the crimes committed at Wardner on said date were actively incited, encouraged, and perpetrated through and by means of the influence and direction of the miners' unions of the Cœur d'Alenes, I hereby express my unqualified disapproval of said acts, and hereby renounce and forever abjure all allegiance to the said miners' union, of which I was a former member, and I solemnly pledge myself to obey the law and not to again seek membership in any society which will encourage or tolerate any violation of law.

——— ———.

"'Dated this ——— day of ———, 1899.'

"The application which nonunion men must sign is as follows:

"'APPLICATION FOR LEAVE TO SEEK EMPLOYMENT IN THE MINES OF SHOSHONE COUNTY.

"'To Dr. Hugh France, *State representative.*

"'Sir: I hereby make application for issuance to me of a permit allowing me to seek employment in the mines of Shoshone County.

"'I am a ——— by occupation.

"'I am a native of ——— and am a ——— citizen of the United States.

"'I last worked at the ——— mine in ———.

"'My shift boss was ———.

"'I have not been for ——— years a member of any miners' union.

"'I took no part, either actively or passively, in aiding, assisting, or encouraging the perpetration of the crimes committed at Wardner on the 29th of April, 1899.

"'I solemnly pledge myself to obey the law.

——— ———.

"'Dated this —— day of ———, 1899.'

"At this writing no union men are permitted to work in the county; the meetings of the miners' unions are prohibited;" and

Whereas it is charged that during the months when a great portion of the male citizens of Shoshone County were thus unlawfully held in imprisonment by the United States troops the wives and families of the said citizens were subjected to insult and outrages by the soldiers of the United States stationed in that county; and

Whereas it is charged that the outrageous misuse of the military power of the United States, hereinbefore mentioned, was brought about at the instigation and in the interest of the owners of the Bunker Hill and Sullivan mines, who, it is also charged, are the owners and manipulators of other similar trusts; and

Whereas said outrages above described, as perpetrated by the United States Army and its officers, are an intolerable abuse of the rights of citizens and a dire menace to the perpetuity of free institutions and the liberty of citizens: Therefore,

Resolved, That the charges herein preferred be referred to the Committee on Military Affairs for a thorough and complete investigation, to determine their truth or falsity; and said committee shall have the power to send for persons and papers and examine witnesses on oath in relation to the subject-matter of this resolution.

The Committee on Military Affairs, to which said resolution was referred, began the taking of testimony on the 20th day of February, 1900, and the hearings continued until the 8th day of May, 1900, when the arguments of counsel closed.

Thirty-five witnesses were examined, and the printed testimony, exclusive of exhibits, amounting to more than 1,500 pages, covered over 2,000 printed pages.

In submitting its report under said resolution, the committee desires to make brief reference to the physical characteristics of the Cœur d'Alene district, in which all the troubles complained of arose and had their continuance. The mines of the Cœur d'Alenes are in Shoshone County, Idaho, and lie near the northern end of the panhandle of the State. The principal towns of the county are Murray, Wallace, Burke, Gem, Mullan, Kellogg, and Wardner, which are principally mining camps and are strung along the base of the Cœur d'Alene and Bitter Root Mountains, which bound the region on the north. The Lolo Fork of Clear Water Creek forms another natural barrier on the south. In some of the towns there is only room for a single narrow street between the mountains and the deep canyon of the river. The Northern Pacific and Oregon Railway and Navigation Company railroads furnish the natural and easy ingress and egress from said district. The only other approach or escape is over rough and almost impassable mountain trails, which in winter are filled in places with snow to a depth of 20 or 25 feet. It is one of the richest lead-mining regions in the world, the ore carrying considerable silver. The annual output of ore amounts to over $5,000,000.

The south part of the county is devoted to farming. It is completely shut off from the mining district by a mountain range trending from east to west across the county.

The chief population of the county is in the mining region in the vicinity of Wallace, the county seat.

By reason of the mountainous condition of the country, Shoshone County is practically shut off from the rest of the State. To reach Boise, the capital of the State, from this county it is necessary to go by way of the city of Spokane, or through Tekoa, Wash. The distance from the capital of the State to the county seat of Shoshone County is more than 500 miles by rail.

The population of the county of Shoshone is about 10,000, the greater portion of which is engaged in mining.

The towns and mining camps involved in the crimes of April 29, 1899, are Burke, Gem, Mullan, Kellogg, and Wardner. Out of 1,500 miners living in these camps, 1,000 were implicated, directly or indirectly, in the riot. The following extract from the Idaho State Tribune, published at Wallace, May 3, 1899, was written by James R. Sovereign, its editor, who was an eyewitness to the affair. It gives a graphic account of the occurrences of April 29, 1899, which were the immediate cause of the declaration of martial law and the call for United States troops:

> Saturday last witnessed what might properly be considered the close of a seven years' war. The sun rose bright and clear in the morning, and the people repaired to their usual vocations in peace and quietude. There was nothing in the order of nature and the mind of the public portentous of the coming tumult. About 10.30 a man on horseback came galloping down Bank street from Canyon Creek, and, halting in front of the Tribune office, said, "They are coming," and passed on at a rapid rate. Five minutes later the whistle of the Northern Pacific engine pulling the train from Burke and Gem resounded with its usual regularity. A moment later it halted at the Oregon Railroad and Navigation depot, and on its 9 freight and ore cars were packed 1,000 men, half of whom were masked and armed with Winchester rifles. After a short halt the train proceeded to the Northern Pacific depot, and after a few minutes' delay they switched to the Oregon Railroad and Navigation track, and without running orders proceeded toward Wardner.
>
> The streets of Wallace took on an air of excitement, and before the train proceeded to Wardner with its human freight on its mission of destruction, armed men walked the streets in quest of an abundant supply of ammunition. It was evident to all that some of the scenes of 1892 were to be repeated, and this time the Bunker Hill and Sullivan Mining Company at Wardner, 12 miles below Wallace, was to be the victim of a forceful demonstration on the part of the organized miners of the Cœur d'Alenes. On the train were about 200 members of the organization at Mullan, and the balance was composed of men from the various mines and outside works on Canyon Creek. The delegation from Mullan had walked to Wallace, and by a prearranged plan had connected with the incoming train from Burke. The failure to secure running orders compelled the engineer to flag the train to Wardner, and owing to the many sharp curves in the road winding down the North Fork the speed of the train could not exceed the speed of the flagman on foot.
>
> The train reached Wardner at 1 o'clock, and the work of clearing the country of all opposition was begun. A detachment of union miners armed with Winchester rifles was dispatched to the mountain side beyond the mill, and the work of placing under the mill 3,000 pounds of dynamite, taken from the magazine of the Frisco mine at Gem, was commenced. At no time did the demonstration assume the appearance or the attitude of a disorganized mob. All the details were managed with the discipline and precision of a perfectly trained military organization. Each miner participating in the affair either wore a strip of white handkerchief in the buttonhole of his coat or a strip of white cloth tied on his right arm. Sixty armed scabs in the employ of the Bunker Hill company offered the only resistence, and they only gave expression to the most pitiable and lamentable cowardice. Only a few desultory shots from the miners were necessary to send them fleeing over the mountains. At the same time Mr. Burbidge, manager of the mine, might have been seen running down the Oregon Railroad and Navigation track toward Kingston, skulking behind every conceivable object and wringing his hands in the desperation of fear. Probably a more humiliating spectacle has not presented itself to the world since the capture of King Charles, nor a more striking evidence of supreme cowardice than was shown by Mr. Burbidge, who heretofore has displayed the defiant air of a tyrant equaled only by Sir Henry Morgan, the leader of the buccaneers of the Spanish Main.
>
> At 2.30 the arrangements were complete, the dynamite was placed under the mill in three departments, the fuse attached, and all was in readiness for the destruction of one of the largest concentrators in the world, costing the company the enormous sum of $250,000. All miners and friends of the miners were warned to take a safe

distance from the work of destruction about to begin. The fuses were lighted, and at 2.26 there was an awful crash, and broken machinery and fragments of the building were hurled high into the air. Fifteen seconds later another followed, and in about the same time a third. From the force of the third shot débris was hurled in every direction, and a huge canopy was formed in the heavens. Fragments of machinery and broken timbers rained down upon the ruins for several seconds. The shock of each explosion was terrific and was heard 20 miles away. The work of destruction was complete. The great concentrator was as completely demolished as it could have been if months had been spent in preparing the giant explosives for that purpose. The work was planned and executed by men who have received the training of a lifetime in the handling of dynamite.

Not only was the mill completely demolished, but the office, books, and papers of the company suffered likewise, and the boarding house of the company, about 300 feet from the mill, was at the time of the explosion a mass of flames, and only the smoldering ashes now mark the place where it once stood.

The explosion was indeed an awe-inspiring scene, and to the eyewitness, were it not for the horrors of destruction, presented a pyrotechnical display which would satisfy the most expert critic of Fourth of July fireworks.

After the terrific shock of the last explosion had died away in the distant mountains an ominous stillness of a few minutes followed. The delegation from Canyon Creek and Mullan, together with a large portion of the people from Wardner, were either on or about the train, which consisted of 9 cars and 2 engines. Winchesters and revolvers were everywhere in evidence. The silence was broken by a single shot from a Winchester from some person on top of one of the cars, followed by a deafening fusillade. For five minutes the rattle of musketry was incessant. It was evident, however, from the beginning of the firing that no harm was intended; that the men were simply celebrating the victory they had secured in the destruction of the Bunker Hill concentrator. In the midst of the firing the engines gave the starting signal and the train moved slowly toward Wallace, but when about one-half mile from Wardner was stopped, it being claimed that 75 of the Canyon Creek and Mullan delegation were left at Wardner. The train slowly backed down to the depot again, and quite a few more boarded the cars, when it proceeded on its way to Wallace.

From Wardner to Wallace there was no incident of importance and no demonstration on the part of the men. Ranchers and laboring people living in the valley congregated along the track and cheered the men lustily as they passed along. The train reached Wallace about 4 o'clock, and about a hundred of the people of the city were congregated at the depot to witness its arrival. Mayor Smith had taken the precaution to temporarily close the saloons. A few from Canyon Creek and a few from Mullan remained in town, but most of the miners from Canyon Creek remained on the train and were taken to their respective homes, and the Mullan miners slowly wended their way back from whence they came.

During the desultory firing at Wardner, shortly after the train from Wallace arrived, Jack Smythe, a miner at the Frisco mine, was shot and instantly killed. How it happened or by whom he was shot is not definitely known. Some say he was shot by scabs in the employ of the Bunker Hill company, others that he was shot by the striking miners through mistake. James Cheyne, a vanner man at the Bunker Hill mill, was shot through the hip and died at the Sacred Heart Hospital in Spokane yesterday morning. R. R. Rogers, the stenographer of the Bunker Hill company, was slightly wounded in the upper lip. So far as known, this constitutes all the casualties of the day's doings in connection with the Bunker Hill explosion.

Immediately on being advised of the above occurrences the governor of Idaho sent the President the following message:

BOISE, IDAHO, *April 29, 1899, 11 p. m.*

The PRESIDENT:

In pursuance of the statute in such cases made and provided, I, Frank Steunenberg, governor of Idaho, the legislature not being in session and it not being possible to convene it, do hereby apply to the President of the United States to call forth the military forces of the United States to suppress insurrection in Shoshone County, State of Idaho. This action is sustained in the fact that all of the available Idaho National Guard volun~~teered for service in the Philippines, and said~~ county is in a state o~~f insurrection~~. I am of the opinion ~~that at least 500 troops in the aggregate will be necessary~~, but smaller detachments should be ordered in as rapidly as possible.

FRANK STEUNENBERG, *Governor.*

The President, on receipt of the telegram, directed the War Department to aid the governor of Idaho as requested, as is shown by the following telegrams:

ADJUTANT-GENERAL'S OFFICE,
Washington, April 30, 1899.

THE GOVERNOR OF IDAHO, *Boise, Idaho:*

In compliance with your telegram of April 29, concerning insurrection in Shoshone County of your State, the President has directed that request be complied with, and following instructions have been sent to General Merriam, at Denver, Colo.: "The Governor of Idaho reports an insurrection beyond the power of the State to control existing in Shoshone County of that State. The Acting Secretary of War directs that you repair at once to the capital of that State, and after conference with the authorities thence you go to the seat of action, calling to your aid such troops as may be most convenient regardless of department lines. Department commanders will be notified. You will take with you the necessary staff officers. The travel is necessary to the public service."

H. C. CORBIN, *Adjutant-General.*

ADJUTANT-GENERAL'S OFFICE,
Washington, April 30, 1899.

COMMANDING GENERAL, DEPARTMENTS CALIFORNIA AND COLUMBIA,
San Francisco, Cal.:

General Merriam has been ordered to Idaho in connection with insurrection in that State reported by governor to be beyond power of State to control. General Merriam has been authorized to call to his assistance such troops as may be most convenient without regard to department lines. Acting Secretary of War directs you send commanding officers of posts under your command to hold their troops in readiness to respond promptly to his calls.

By command of Major-General Miles:

H. C. CORBIN, *Adjutant-General.*

In accordance with this order General Merriam proceeded to the State of Idaho, conferred with the governor, ordered the United States troops stationed at Boise, Walla Walla, Vancouver, Harrison, Assiniboine, Russell, and Douglas to go to Wardner, Shoshone County, Idaho, and went there at once himself.

Upon his arrival at Wardner he stationed his troops to control outlets from the mining camps and scrutinized outward travel, with a view to detaining the rioters.

On the 3d of May, 1899, the governor of Idaho declared the county of Shoshone in a state of insurrection and rebellion, and asked General Merriam to have all trains stopped and suspicious persons returned, as will be seen by the following proclamation and telegram:

STATE OF IDAHO, *Executive Office:*

Whereas it appearing to my satisfaction that the execution of process is frustrated and defied in Shoshone County, State of Idaho, by bodies of men and others, and that combinations of armed men to resist the execution of process and to commit deeds of violence exist in said county of Shoshone; and

Whereas the civil authorities of said county of Shoshone do not appear to be able to control such bodies of men or prevent the destruction of property and other acts of violence; and

Whereas on Saturday, the 29th day of April, 1899, at or near the town of Wardner Junction, in said county of Shoshone, State of Idaho, an armed mob did then and there wantonly destroy property of great value, with attendant loss of life; and

Whereas said destruction of property, with attendant loss of life by mob violence (as above set forth), is but one and a repetition of a series of similar outrages covering a period of six years or more just passed, the perpetrators of said outrages seeming to enjoy immunity from arrest and punishment through subserviency of peace officers of said county of Shoshone (or through fear on the part of said officers) to such bodies of lawless and armed men; and

Whereas I have reason to believe that similar outrages may occur at any time, and believing the civil authorities of said county of Shoshone are entirely unable to preserve order and protect property;

Now, therefore, I, Frank Steunenberg, governor of the State of Idaho, by virtue of authority in me vested, do hereby proclaim and declare the said county of Shoshone, in the State of Idaho, to be in a state of insurrection and rebellion. In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State. Done at the city of Boise, the capital of the State of Idaho, this 3d day of May, in the year of our Lord 1899, and of the Independence of the United States the one hundred and twenty-third.

FRANK STEUNENBERG.

By the governor:

M. PATRIE, *Secretary of State.*

BOISE, IDAHO, *May 3.*

General MERRIAM, *Tekoa:*

My representative informs me that rioters are fleeing toward Spokane. Have all trains stopped and suspicious persons returned. Martial law declared.

FRANK STEUNENBERG.

Under the above circumstances and direction the United States Army and its officers were employed in aid of the governor of Idaho in suppressing the insurrection and rebellion in Shoshone County, proclaimed May 3, 1899, and so many of the "Army and officers" as were necessary were so employed from the time they went there, as above stated, to the last of October, 1899, when they were relieved from all active duty in aiding the civil authorities and went into garrison in said county.

Under the original instructions the troops were employed in aid of the governor of Idaho in suppressing the insurrection of April 29, in apprehending the perpetrators of the outrages of that date, and in restoring peace and order to Shoshone County.

In doing this the troops supported the governor's agents and representatives in making arrests of suspected persons, and in detaining and guarding persons so arrested.

At the time these troubles occurred Governor Steunenberg was sick and in the hospital, but was not incapacitated from exercising his functions as chief executive. Therefore he proceeded to inform himself of the situation in said county, and dispatched Mr. Bartlett Sinclair, then and now auditor of the State, to the scene of the troubles.

He finally determined, owing to the distance of Shoshone County from Boise, and the necessity for having a trusted man constantly on the ground, to keep Mr. Sinclair continually there. He also appointed others at the said place to assist in the work.

Mr. Sinclair was appointed and styled his "personal representative," and the other persons, about 25 or 30, were designated as State deputies.

The governor was unable from his other official duties to be present at all times in said county, and it was a physical impossibility for him personally to attend to all details. He acted generally through these persons appointed by him, and particularly designated Mr. Sinclair as the person in charge.

He was guided somewhat in this action by the provisions of sections 7405 and 7406 of the Revised Statutes of Idaho, which are as follows:

SEC. 7405. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, and is placed under the temporary direction of any civil officer, it must obey the orders in relation thereto of such civil officer.

SEC. 7406. When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has exerted and has not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer, or of the district attorney, or probate judge of the county, by proclamation, to be published in such papers as he shall direct, declare the county to be in a state of insurrection, and may order into service of the Territory such number and description of volunteer or uniformed companies, or other militia of the Territory, as he shall deem necessary, to serve for such term and under the command of such officer or officers as he shall direct.

Through these agents the governor arrested over 700 men, suspected of being connected with the conspiracy which resulted in the crimes of April 29, 1899.

In the work of making arrests these appointees of the governor were supported by the United States troops, and the troops received, detained, and guarded the prisoners thus arrested.

These prisoners were at first confined in a warehouse and in box cars until an improvised prison could be constructed, which was done as soon as possible.

Meantime an examination into the prisoners' connection with the riots was made and those found to be innocent were promptly released.

In order to report fully on the testimony offered at the hearings the committee will discuss the several charges made in the preamble to the resolution.

The first charge is as follows:

> Whereas it is a matter of general information, given out by the public press and charged by the industrial organization known as the Western Federation of Miners, that United States troops have been sent into the State of Idaho in defiance of and contrary to the provisions of article 4, section 4, of the Constitution of the United States, in that it was done at the individual request of the governor of Idaho, without the authority of the legislature, and at a time when there was no condition of insurrection or riot, and when the legislature could have been called together without danger or delay from any source whatever; and, further, without even consultation by the governor with the sheriff of Shoshone County, where it was desired that the troops should be, and actually were, sent.

There has not been presented to the committee by the Western Federation of Miners any protest against the employment of United States troops in suppression of the riots of April 29, 1899, or any charge of misconduct on the part of officers and troops so employed.

The only criticisms by any labor organization of the use made of the troops in Shoshone County are those reported by the Secretary of War in his report dated January 18, 1900, known as Report No. 24, in response to House Resolution No. 31, which report is made part hereof.

The committee finds that the criticisms referred to are based upon a misapprehension or deliberate distortion of the facts.

The committee does not find that the United States troops were sent into the State of Idaho in defiance of and contrary to the provisions of article 4, section 4, of the Constitution of the United States, but does find that the troops were sent into the State in accordance with the guarantees of the Constitution of the United States to protect the States of the Union against invasion and domestic violence, and as directed by the act of Congress approved February 28, 1795, and now embraced in section 5297, Revised Statutes of the United States, which section reads as follows:

> In case of an insurrection in any State against the government thereof, it shall be lawful for the President, on application of the legislature of such State, or of the executive when the legislature can not be convened, to call forth such number of the militia of any other State or States, which may be applied for, as he deems suffi-

cient to suppress such insurrection; or, on like application, to employ for the same purposes such part of the land or naval forces of the United States as he deems necessary.

And by the Revised Statutes, section 5298, wherein it shall be lawful for the President "to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed or the execution thereof forcibly obstructed."

Article 4, section 4, of the United States Constitution, provides that "The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them * * * on application of the legislature, or of the executive (when the legislature can not be convened), against domestic violence."

The President did not find it necessary to declare martial law under section 5300 of the Revised Statutes, as is shown by the following telegraphic correspondence:

WASHINGTON, D. C., *May 4.*

Brigadier-General MERRIAM:

For information of President, Acting Secretary of War desires to know if the situation is such as to require issuance of proclamation as required by section 5300, Revised Statutes.

H. C. CORBIN, *Adjutant-General.*

WARDNER, IDAHO, *May 4, 1899.*

ADJUTANT-GENERAL ARMY, *Washington, D. C.:*

Inquest still in progress with closed doors. One hundred and twenty-eight arrests made by State officials under military support. No signs of resistance, but indications are most leaders of mob have escaped, going east or west into Montana and Washington, others hidden in the mountains. Sheriff at Thompsons Falls, Mont., reports many arriving on foot over mountain trails. Governors Idaho and Montana corresponding for arrests in Montana. Troops in position to do all that is possible. There is now no sign of organized resistance.

MERRIAM, *Brigadier-General.*

The governor of Idaho had duly proclaimed martial law and the circumstances did not require any such step on the part of the President.

The committee also finds that the governor of Idaho is required by article 4, section 5, of the Idaho constitution, "to see that the laws are faithfully executed," and that, in the absence of effective action by the peace officers of Shoshone County, as the supreme executive of the State, he was bound to use the most expeditious and available means at his disposal to enforce the laws of his State.

The governor of the State of Idaho was confronted with the insurrection and rebellion in Shoshone County at a time when the legislature of his State was not in session and could not be called together to meet the emergency.

Under the statutes of the State of Idaho, the legislature could not be convened in session under twenty days, during which period further destruction of property and life might have resulted if the mob were not restrained, and those guilty of the crimes and outrages of April 29 would have undoubtedly escaped. All the available national guard of the State of Idaho had volunteered for service in the Philippines, and were then absent from the State.

The committee finds that the United States troops were duly called for and lawfully sent to Shoshone County, Idaho, to assist the State authorities in suppressing the insurrection there existing and in securing the ringleaders and participants in the crimes and riots of April 29, 1899.

The committee also finds that the request for United States troops was not the "individual request" of Frank Steunenberg, but was an official request made by the governor of the State of Idaho.

The committee also finds that a condition of riot and insurrection existed in Shoshone County on the 29th day of April, 1899, and that the peace officers of the county either could not or would not aid in suppressing the riot and insurrection.

The committee also finds that James D. Young, sheriff of Shoshone County, Idaho, falsely assured the governor, on the 26th and 27th of April, 1899, that no trouble threatened beyond his disposition and ability to control.

On the day of the destruction of the Bunker Hill and Sullivan property and the shooting of Rogers, Symthe, and Cheyne the sheriff went on the train from Wallace to Wardner with the mob, which committed murder and arson, and made no effort to prevent the rioters from carrying out their lawless purpose.

William H. Pipes testifies, on page 1275 of the record, that Sheriff Young was seen walking back and forth in the road at Wardner, with the "star" of his authority on his breast, "apparently unconcerned." Noticing Young with his star, this witness inquired of a masked man near by who he was, to which the masked man responded: "That is our sheriff; he is all right."

He asked a newspaper reporter that day to "Give the miners the best of it."

He had been three times elected to office in Shoshone County; he was presumably well acquainted with the voters of said county, a large proportion of whom were engaged in that murderous enterprise of April 29, 1899; he rode on the stolen train with the mob that day, was seen in conversation with them, and yet alleges that he was unable to identify a single person. He made the statement under oath, though he must have known at the same time that he was committing the crime of perjury. He was subpœnaed before this committee at the request of the author of the resolution and was present at the hearing, but was not called to the witness stand. Had he done so he must have admitted, either that he was unable through sympathy or fear to control the riotous situation or that he was inefficient and helpless to suppress disorder and crime. In either event he would have justified the action of the governor in declaring Shoshone County to be in a state of insurrection.

This and other testimony in the record means that Sheriff Young, either from indifference, sympathy, or fear, became a party to the conspiracy which resulted in the destruction of property and the taking of the lives of Smythe and Cheyne.

He is the sheriff referred to in the following telegraphic correspondence, and whom this "Whereas" charges was not consulted by the governor about the necessity for troops:

FAIRFIELD, WASH., *April 26, 1899.*

FRANK STEUNENBERG, *Governor, Boise, Idaho:*

Armed mob stopped our men this morning and prevented them from working. We have raised wages and men are satisfied and want to work, but are intimidated by miners' union, who seek to force recognition of their organization and to dictate terms and conditions here under which we shall work. County authorities unable to cope with mob, and we appeal to you for protection for ourselves and our men. Please answer, Wardner.

FREDERICK BURBIDGE.

BOISE, IDAHO, *April 26, 1899.*

JAMES D. YOUNG, *Sheriff Shoshone County:*

Am informed that armed mob stopped men from working in mines at Wardner and that county authorities are unable to cope with mob. Wire me immediately the situation.

FRANK STEUNENBERG, *Governor.*

WARDNER, IDAHO, *April 26, 1899.*

FRANK STEUNENBERG, *Governor, Boise, Idaho:*

Your telegram received. Am on the ground. All is quiet. No armed mob. Matters are orderly. Will do all in my power to preserve order. The county authorities were not applied to until 10 a. m. this morning.

JAMES D. YOUNG, *Sheriff.*

BOISE, IDAHO, *April 29, 1899.*

JAMES D. YOUNG,
Sheriff Shoshone County, Wardner, Idaho:

Representations are made that you are not able to cope with those who threaten disturbance and that railroad property has been forcibly taken possession of. Up to this time I have relied upon your power and ability to protect property and preserve order. Wire me the situation and any contemplated or actual violence, as reports seem to call for prompt and vigorous action by the State.

FRANK STEUNENBERG, *Governor.*

WARDNER, IDAHO, *April 29, 1899.*

FRANK STEUNENBERG, *Governor, Boise, Idaho:*

About 800 armed men took possession of train at Wallace and arrived in Wardner Junction about noon. They immediately marched to the Bunker Hill and Sullivan concentrator and destroyed it, together with the adjoining buildings, after which they returned on the same train to Wallace. A few cars were badly damaged by the explosion of the mill. One man was shot and killed and two wounded. No one expects further trouble, so far as I can learn. I was on the scene during the trouble, but was unable to disperse the armed miners. Have deputized several men and think I can handle the situation.

JAMES D. YOUNG, *Sheriff.*

WARDNER, *May 1, 1899.*

FRANK STEUNENBERG, *Governor:*

Have thoroughly investigated advisability of declaring martial law, and fully nine-tenths, if not more, of citizens favor it. I recommend that course for the entire country. The present county administration is a perfect farce. There is only one organized town in the county. All other settlements are directly under county maladministration. Successful prosecution of the rioters is impossible without presence of the troops. People are afraid to testify without Federal or State protection. Masked men are prowling about town to-night, and the people are frightened.

BARTLETT SINCLAIR.

FRANK STEUNENBERG, *Governor, Boise:*

Guards and special constable looking after Bunker Hill property were compelled by the sheriff to disarm, and sheriff now has guns. Order sheriff to return arms. Inform me fully what aid people may expect at once.

BARTLETT SINCLAIR.

WARDNER, *May 2, 1899.*

FRANK STEUNENBERG, *Governor, Boise:*

Will not go to Wallace to-day. Young has returned guns. Repeat my recommendation favoring declaration of martial law.

BARTLETT SINCLAIR.

In view of these undisputed facts the committee finds that the sheriff of Shoshone County, on account of his treachery as a peace official, while the governor properly applied to him, was absolutely inefficient and unworthy of confidence. Further consultation with him about law and order would have been fruitless.

The Wardner News of May 6, 1899, says in this connection:

The inaction of Sheriff Young in connection with the last outbreak of Canyon Creek savages seems to have created a great deal of surprise among outsiders. It has surprised no one here. Nothing was expected of him when he was elected except to draw his salary. He always ~~was a prominent union man and his election didn't change his principles~~. ~~As far as the~~ law-abiding citizens of this county are concerned, he ~~is a menace rather~~ than a protection. He will protect dynamiters but persecute respectable citizens, just as his predecessor of the same political faith did. His sympathies are in favor of criminals. His examination in the cases pending will prove this. There is not the slightest doubt that he knew of the scheme to blow up the Bunker Hill concentrator as soon as it was concocted. But he took care not to give the people of Wardner any warning. In the name of justice is there no way to rid the people of this county of such a miserable subterfuge for a sheriff?

Sheriff Young was subsequently removed from office by due process of law, after full hearing, in the State district court, and being represented by able counsel, on account of his neglect and inefficiency in this emergency, under section 7454 of the Idaho statutes. The opinion and judgment of the court are as follows:

As to the charges made in the information against the defendant sheriff, it could serve no good purpose for me to recite again the evidence offered in support thereof. The defendant in his own testimony has convicted himself of the most flagrant violation of official duty that could be imagined. The defendant seems to have utterly disregarded every obligation resting upon him by virtue of his being a peace officer in Shoshone County. From his own statement he did nothing whatever to prevent the difficulties which occurred at Kellogg on April 29. He took no steps to apprehend or arrest those participating in such unlawful acts. Men coming from communities where he had been acquainted were met by him at Wallace, and he rode on the train with them to Kellogg, heard their talk, followed in their steps, witnessed the destruction of the Bunker Hill and Sullivan Mining Company's property, and permitted, almost within his view, the murder of two men, and, after the difficulty was over, remained at the place of the difficulty, without either in person or by deputy following the persons engaged in the unlawful acts to the place from whence they came with a view of identifying or apprehending them. The highest peace officer of the county, conducting himself as he states in his own evidence, has disgraced the office to which he has been elected and has shown himself to be incompetent and unfit as a public servant.

Findings and a decree may be prepared sustaining all the allegations in the information against the sheriff and removing him from office.

The following is the finding of the coroner's inquest upon the cause of the deaths of Smythe and Cheyne, with reference to the conduct of said sheriff at and before the riots of April 29, 1899 (p. 1506):

The sheriff of Shoshone County, James D. Young, was appealed to in like manner, but throughout all the period of time up to the final commisson of the crimes he wholly neglected and failed to perform his duty looking to the preservation of the peace. On the contrary, he came down on the train from Wallace with the mob of armed and masked men, associated with them throughout the entire day, held long and earnest conversations with the individual masked leaders during the carrying into effect of the conspiracy to destroy the property of the Bunker Hill Company, refused to appoint proper deputies who were not members or sympathizers with the miners' unions, but aided and abetted the accomplishment of the conspiracy.

Although at Wallace and again at Wardner on the arrival of the train he was within a few feet of a public telephone and telegraph, he gave no warning to either the Bunker Hill and Sullivan Company's employees or the citizens of Wardner of the coming avalanche of rioters. After the explosion took place he ordered the appointment of ten special deputies to guard the Last Chance mine, a union mine, all of whose operatives, with few exceptions, were active participants in the crimes of the day.

Furthermore, he willfully deceived the governor of the State of Idaho as to the true condition of affairs at Wardner in asserting that there was no trouble and that he had the situation well in hand.

When the troubles of April 29 were menacing, the county commissioners, Boyle, Stimson, and Simmons, were called upon to take steps looking to the protection of life and property, and with reference to the conduct of said county commissioners the coroner's inquest found as follows (p. 1506):

During the week preceding the killing of Cheyne and Schmidt (Smythe) and the blowing up of the mill it became evident to the managers of the Bunker Hill and Sullivan mine that serious trouble was intended. Thereupon an appeal was made by its assistant manager to the three county commissioners, Boyle, Stimson, and Simmons, calling their attention to the critical condition of affairs at Wardner and urging upon them the necessity of taking some precautionary measures to prevent the destruction of property and possible loss of life. Neither one of the said commissioners paid the slightest attention to such warning or request. No meeting was ever called to consider the situation; no peace officer was ever waited upon or instructed to take measures to prevent the commission of crime, but each and every one of said commissioners stood idly by and passively permitted the complaint of the Bunker Hill and Sullivan Company to go unheeded.

The county commissioners were subsequently removed from office by the district court of Shoshone County after a full hearing and being represented by able counsel, as shown by the following opinion and judgment of said court, as follows:

Under the general powers of the board of county commissioners it was the duty of the board to have supervised the conduct of the sheriff and seen that he obeyed and executed the law and protected the people of the county in life and property, and the taxpayers generally of the county, to the extent of furnishing all the protection at his command, so that the county in no way would become liable in damages by reason of any neglect of official duty. But they seemed to have viewed the notification of the Bunker Hill and Sullivan Mining Company with very little concern, and took no steps to protect them or their property, or their employees, or the taxpayers of the county.

The responsibilities, as indicated by the action of the members of the board in this matter, as well as all other matters referred to in this opinion, seem to have rested lightly upon the shoulders of said board. They do not seem to have realized the fact that they were servants of the people, or that they owed any duty to the office held by them or to the people who had placed them in office. They have prescribed their own rules of action, disregarded the plain, unequivocal provisions of the statute, and acted independently and in disregard of the requirements of the law. Just what they might have accomplished by taking hold of the difficulties which were threatened on the 26th of April, and which finally culminated in the destruction of the Bunker Hill and Sullivan mill and other buildings and the death of two men on the 29th of April, can not be gathered from the evidence, but that it was their duty to furnish to those threatened with the destruction of property, and the people generally of the county, the strong support of the law there can be no question, and by failing to do so they have disregarded and neglected their official duties and by their acts demonstrated their incompetency and unfitness for the public trust imposed in them by the people of this county.

The second charge is as follows:

Whereas in defiance of section 9, article 1, of the Constitution, martial law was declared and the writ of habeas corpus suspended in said county in a time of profound peace, when there was no condition of rebellion or invasion or any menace to the public safety.

The proof shows conclusively that at the time martial law was declared in Shoshone County it was not in a time of "profound peace," and that there were numerous conditions of "rebellion and menace to the public safety."

The acute conditions of the insurrection are noted throughout the testimony, particularly in the testimony of Governor Steunenberg, Bartlett Sinclair, Dr. France, and the army officers.

Captain Leavell calls attention to the extraordinary conditions which prevailed in June, 1899, as is shown in the following reports made by him to General Corbin and General Merriam:

WARDNER, IDAHO, *June 3, 1899.*

ADJUTANT-GENERAL UNITED STATES ARMY, *Washington, D. C.:*

Men who have been arrested charged with complicity with the riots here are still being guarded by me. The civil authorities are not prepared to take charge of and guard them. Trials have not begun because attempt has been made to get writs of habeas corpus. These have been denied by the State supreme court, and claim is made that the matter will be carried into the Federal courts. No acts of violence have been committed since my arrival here (May 9), but relations of sympathizers with arrested men with the remainder of the community are so strained that I am convinced only the presence of Federal troops prevents bloodshed, arson, and other acts of violence.

LEAVELL, *Commanding.*

CAMP WARDNER, *Kellogg, Idaho, June 13, 1899.*

General MERRIAM, *Denver, Colo.*

DEAR GENERAL: Please pardon my sending you a semiofficial letter of this sort, but the air is getting very thick here.

I fear that trouble is brewing—that the Canyon people are preparing for more bloodshed. Threats have been made here, at Wallace, and up the canyon, both individual and general. To-day the Roman Catholic priest, who is in daily contact with many of these people, told me that unless the trials are speedily concluded (which is hardly within the range of possibility) the union people were going to "do serious trouble." He also said they would fight any idea of the breaking up of the union or the forcing out of the country of people belonging to it.

Prisoners have tried to bribe at least one of my sentinels, and people outside are, I am quite certain, trying to make friends with them for a purpose.

I am not a calamity howler, but I believe more troops should be in the district until after the conclusion of the trials which began yesterday. The grand jury began its work yesterday.

The trials proper will not, of course, begin till after the grand jury completes its labors.

If you can make it convenient to come here soon, I believe it would be a good thing.

Please pardon me if I appear presumptuous in this matter.

Very respectfully,

BEN W. LEAVELL,
Captain, Twenty-fourth Infantry.

[First indorsement.]

HEADQUARTERS DEPARTMENT OF THE COLORADO,
Denver, Colo., June 16, 1899.

Respectfully forwarded to the Adjutant-General of the Army, for information of the honorable Secretary of War. It is, of course, expected that as trials of the large number of prisoners begin and the probability of conviction increases every precaution to prevent escape will be necessary; and, generally, the presence of an abundant force is desirable, in order to discourage any attempt at release or further dynamiting. I have ordered three officers and 200 dismounted cavalry from Fort Riley to Wardner to take the place of three companies Twenty-fourth Infantry, ordered to foreign service. I dare not further reduce the force in this department, or go myself, in view of labor disturbances anticipated here on a much larger scale; but I advise that two officers and 100 dismounted men be sent from Fort Meade, if possible, to report to Major Smith, at Wallace, Idaho, and to remain as long as he deems needful. Telegrams from Major Smith and governor of Idaho all indicate necessity for continued show of strong force pending trials now progressing.

H. C. MERRIAM,
Brigadier-General Commanding.

The situation and the conditions prevailing in Shoshone County are fully shown in the following correspondence between the War Department and Governor Steunenberg:

WAR DEPARTMENT,
Washington, September 28, 1899.

SIR: I beg to call your attention to your application to the President, dated April 29, 1899, for military forces of the United States to suppress insurrection in Shoshone County, in the State of Idaho, and to inquire whether the insurrection in that county has not now been suppressed, so that the troops may be withdrawn and employed in other duties. In case that you should deem that the time has not arrived for the entire withdrawal of the troops of the United States from that county, I beg to make the following suggestion in regard to their further service: I am informed that they are now being used by the civil authorities of the State and county as a guard for certain prisoners—upward of a hundred in number—who have been arrested by the civil authorities upon warrants issued by the civil courts, and are held under such warrants or indictments found by the grand jury of the county; that these prisoners, or most of them, have been held for a number of months, and that during the period of their detention the district court of Shoshone County, which is the court having jurisdiction to try indictments found by the grand jury, has twice convened and adjourned without bringing these prisoners to trial; that the next regular term of court will not be until January of next year, and that in the meantime, unless something is done to prevent it, these prisoners would remain in prison under guard of the troops of the United States.

I do not wish in any way to make any suggestion relating to the administration of justice in your State, or to imply that the failure to bring these prisoners to trial has not been for perfectly good reasons in accordance with the law and practice of the courts of Idaho, but I am much disinclined to have the troops of the United States continued longer in the attitude of retaining in custody the citizens of a State who have remained so long without being tried, and I feel bound to urge that, if it is not convenient to bring the prisoners to speedy trial, you will substitute civil guards as their custodians and relieve the troops of the United States from further performance of that duty.

I have the honor to be, very respectfully, yours,

ELIHU ROOT, *Secretary of War.*

Hon. FRANK STEUNENBERG,
Governor of Idaho, Boise, Idaho.

STATE OF IDAHO, EXECUTIVE OFFICE,
Boise, Idaho, October 10, 1899.

SIR: In reply to your communication of September 28, relative to the withdrawing of the troops from Shoshone County, Idaho, and your interrogatory therein contained as to whether the insurrection in that county has not now been suppressed, so that the troops may be withdrawn, will say that it is my deliberate judgment that the withdrawal of the troops from Shoshone County would be attended with the most serious consequences. I believe that while upon the surface there is an apparent quiet, should the troops be withdrawn it would surely result in a great loss of property and the loss of life in that vicinity.

Covert threats are constantly being made by those who engaged in the riot of April 29, which resulted in the destruction of some $250,000 worth of property and the assassination of two men, that as soon as the troops are removed they will gratify their revenge upon those citizens who have been induced to assist the State in its attempt to ferret out crime; and the history of that region convinces me that these are not idle threats or the boasting of irresponsible parties, but are the expressions of deliberate and well-arranged purposes and plans. In the beginning of the present prosecutions upon the part of the State (meaning the trials of those who participated in the murders and riots of April 29, 1899) a great many good citizens were induced to testify and give evidence upon the representation that they should be protected, and I have no doubt but that each and every one of these would be compelled to leave the country and sacrifice their homes and property should the protection which was assured them be taken away by the removal of the Federal troops.

These convictions, which are not disturbed by a single doubt, arise by reason of the history of the county. It is impossible to appreciate the necessity of the troops in that vicinity without going somewhat into previous conditions, for it should be understood that this is not a conflict between labor and capital nor a question of wages, but it is a conflict between the State of Idaho and certain criminal organizations which seek to cloak themselves under the cover of labor organizations. These organizations were originally undoubtedly legal and proper, and were organized for a commendable purpose, but they have been taken possession of by men who utterly ignore all law, who are anarchists in belief and practice, and by such men transformed into criminal combinations. We do not concede for a moment that these organizations in Shoshone County to which we are referring have anything in common with the great labor organizations throughout the country, and they are not in any way to be considered in that light. We are not in conflict with organized labor, as such, in any manner whatever.

To establish the truth of these statements I call attention to the following facts, the truth of which may be easily ascertained by anyone desiring to make an investigation:

In 1892 a difficulty arose between the mine owners and the miners' union, by reason of the constant interference of certain members of the union with the operation of the mines. This led to injunction suits upon the part of the mine owners, wherein the unions were enjoined from interfering with the operation of the mines. Upon the morning of July 11, 1892, the union men, having previously armed themselves, commenced firing on the guards and workmen at the Frisco mine and mill. They next ran giant powder down the penstock of the Frisco mill and blew it to pieces, utterly destroying the mill. In the general fighting which followed quite a number of men were killed. Governor Willey proclaimed martial law, the troops were sent in and quiet restored. The State undertook to prosecute a number of the parties for murder, but the final result was that they all escaped punishment, except certain minor punishments for contempt. A cry was shortly raised for the removal of the troops, it being alleged that quiet had been restored and that there was no longer any necessity for the troops remaining there. Martial law was revoked November 18, 1892, the troops were removed; and it is to the history of the camp since the removal of the troops that I invite particular attention:

Even before the removal of the troops, and while the removal was being contemplated, the following notice was posted at the mouth of the tunnel of the Gem mine:

"Look out, scabs! One more warning, and the last one. Before this month is over 1,500 pounds of giant powder will be exploded, and all in this mine will be sent to hell. If we can not work the mines, no one else shall."

This was followed, immediately after the removal of the troops, by a number of citizens who had been identified with the State in its prosecution being forced to leave the country. They were threatened in the most brutal manner—one man being tied on a hand car which was turned loose upon a steep incline; others hauled out of their beds at midnight and forced to leave without even being permitted to take with them their personal property.

On July 11, 1893, in a public speech, one Peter Breen, of Butte, Mont., who is now one of the parties putting forth strong effort to have the troops removed, declared in substance: "We have given the mine owners a fight to the finish, and if they are not satisfied we can give them some more. This," he said, "was the happiest moment of his life, and that he was at all times willing to be classed as one of the dynamiters of the Cœur d'Alenes."

On April 24, 1893, the managers of the Gem and Frisco mines were waited upon by a delegation appointed to act by the Gem Miners' Union and submitted a list of 23 names of men employed in those mines and requested that they be discharged.

On July 3, 1894, one John Kneebone was openly murdered. This man Kneebone had been one of the principal witnesses for the State in its prosecution in 1892 and had been many times threatened, being at one time driven out of the county and almost fatally wounded, and at the time of the wounding was robbed. On this day, July 3, 1894, along in the afternoon, about 40 masked men came to Gem from the direction of Burke. Their coats were turned inside out and they were otherwise disguised in some respects. Each one carried a rifle or a shotgun. They marched down the railroad track and were in full view of all who were out on the street. They then went in the direction of the mill. Kneebone was working in the blacksmith shop. He was fired upon by the mob and rolled down the hill, dead. The parties then inquired of the whereabouts of Supt. R. K. Neil, Foreman Crumer, Frank Higgins, and Charles West. These parties were taken captive and marched up the railroad track by the masked men. In the meantime the wires had been cut both above and below Gem. The above parties were afterwards found and rescued by their friends. Most of them, however, left the country at once in order to avoid being assaulted or killed.

On July 14, 1894, an attempt was made to blow up the electric power house of Bunker Hill mine at Wardner. The explosive which was made for the destruction of the property fell short of its mission by striking some obstruction that prevented it from going under the building. The building was badly shaken and in some respects injured.

About this time the Silver Star newspaper, then the official organ of the miners' union, so called, contained the following editorial:

"About two months ago the miners union requested the 'Gem' Company to discharge those objectionable 'scabs,' and later on went to the men and advised them to leave the camp, as their presence here was sure to end disastrously sooner or later. Hence no blame for this outrage can be laid at the doors of the union, as they have done everything in their power to avert it by adopting other and more peaceable means, and had great hopes of succeeding."

They are referring here, it will be understood, to the Kneebone murder.

The law-and-order paper of the community, known as the Miner, said editorially about this time:

"The murder of Kneebone and the expulsion of Messrs. Neil, Crumer, Higgins, and West from the country was simply the climax to what has been going on in a milder form in the Cœur d'Alenes for months past. To those who have watched the trend of events the 'Gem' outrage was no surprise. Indeed, it was the natural result of a spirit of lawlessness, unchecked, which has long existed here. So strong has the spirit grown that the most sacred rights of American citizenship have been trampled upon, and he who would raise his voice to protest has been silenced by threats or hushed by platitudes of those who placed financial gain above patriotism, who sacrifice honor and manhood for the sake of trade. This, in brief, is the established condition in the Cœur d'Alenes.

"The exigency of the condition demands the continued presence of United States troops, and we believe the only permanent cure for existing evils will be found in the establishment of a military post at some available point in the Cœur d'Alenes."

It is needless to say that this same newspaper was soon driven from the camp and ceased its publication.

On July 16, 1894, a special grand jury was called for the purpose of investigating the death of John Kneebone, and its report is one of the most pitiful and shameful things that does, or could, disgrace the records of the American courts. We quote at large a part of the report of this grand jury:

"We are especially charged by your honor to make an investigation of the outrage of July 3, at the Gem mine, on Canyon Creek, an incident of which was the brutal murder of John Kneebone. The occurrences of that day are known to everyone in the country. On the afternoon of July 3, 1894, a band of armed and masked men, some forty or fifty in number, suddenly appeared at the Gem mine, where the workmen were quietly pursuing their usual avocations, and instituted a search for certain persons working in the mine whose only crime was that they were obnoxious to those men and their sympathizers. Some of these men came upon Kneebone, employed at his work at the blacksmith shop of the mine. As Kneebone, terrified at the sudden appearance of the masked men, turned and fled from the shop, two of the masked men fired at him, unarmed and helpless as he was. Kneebone was slain by one of the shots. It would appear that the commission of this foul murder must have disarranged the plans of the masked men, for they desisted from any further effort to find all the men of whom they were in search, and contented themselves with taking as prisoners the superintendent of the mine, the foreman of the mill, and two of the workmen, all of whom they conducted up Canyon Creek to the Montana line, where the prisoners were turned loose with orders not to return to the country under penalty of death.

"The procession of masked men with their prisoners marched past and in view of the people of the town of Gem, whose attention had been directed to the unusual occurences at the mine. The deputy sheriff at Gem called upon the citizens of Gem to assist him, but could prevail upon none of them to do so. He himself approached the mob and remonstrated with them, but was warned back with leveled rifles.

"The masked men with their prisoners proceeded up Canyon Creek, which is thickly settled above the Gem mine, and in its course the procession passed through the main street of the town of Burke. The masked men must have been residents of Canyon Creek, and, though masked in various ways, they were seen by hundreds of their acquaintances, and it is to be supposed that many of them were known to the residents of Gem and Burke as the procession passed up the creek. And yet, though the grand jury has been in session for over a week, and though it is widely known throughout the country that we are sitting mainly for the investigation of this affair, and though liberal rewards have been offered by the State and by the county for the apprehension of the murderers of Kneebone, not a resident of Canyon Creek has come forward to testify to the identity of those men; and, though rumor has it that many of these men were recognized by their prisoners, the exiled men have departed from the State of Idaho and evidently are afraid to return for the purpose of giving evidence before the grand jury.

"We have summoned before us such persons as we had reason to believe had had some opportunities of seeing and identifying these men, but have obtained little or no testimony that would justify us in finding an indictment against any one.

"We, therefore, with regret, suspend our labors on that subject, deploring the condition of our country and the spirit of our citizens, which, either through a reign of terror existing on Canyon Creek or through sympathy with crimes of this character, prevents the bringing of these murderers to justice; and we can only hope that with the lapse of time and the coming of a better day to our country, evidence may develop which may justify a new grand jury in finding indictments against the right men.

"It would be trifling with the subject not to recognize in our report that the outrage at Gem is but one feature, perhaps the ugliest one, of the unfortunate agitation which has been going on now for over two years in the ranks of labor in this country, embittering the hearts of men and paralyzing the industries of our country."

On December 22, 1894, a large number of nonunion men were called from their beds and were allowed until daylight to pack their personal effects and leave, which they did.

On April 5, 1895, J. J. Mills, of Wallace, was driven from his work at the Gem mine by a band of armed and masked men, and forced to leave the country.

On June 1, 1895, several other men were driven from the camp by armed and masked men.

On October 27, 1895, John Ecklund was assailed, beaten, and driven out of the camp, and at the same time $23 was taken from his person.

On May 10, 1896, another grand effort was made to destroy the Bunker Hill concentrator. The explosion of dynamite shook all the buildings within a radius of a mile. The machinery at the mill was stopped and electric lights went out almost instantly. Fortunately serious damage was not incurred, and the fire which broke out was extinguished by the employees of the company.

On February 7, 1897, three men broke into the bedroom of one John Kopp, covered him with guns, and threatened to kill him if he did not leave the camp instantly. He made complaint against three parties, but was driven from the camp before being permitted to testify, and the parties were turned loose.

On May 8, 1897, Ed. Boyce, now the president of the Western Federation of Miners, and the most prominent party putting forth efforts for the removal of the troops from the Cœur d'Alenes, in an address at Salt Lake City, Utah, used the following language:

"I deem it important to direct your attention to article 2 of the constitutional amendments of the United States: 'The right of the people to keep and bear arms shall not be infringed.' This you should comply with immediately. Every union should have a rifle club. I strongly advise you to provide every member with the latest improved rifle, which can be obtained from the factory at a nominal price. I entreat you to take action on this important question, so that in two years we can hear the inspiring music of the martial tread of 25,000 armed men in the ranks of labor. I would recommend the adoption of a new ritual. The constitution (of the Western Federation of Miners) should also be amended so as to declare all members of the National Guard ineligible to membership, and withhold our patronage and assistance from all companies and individuals or organizations where any member of the National Guard is employed or admitted to membership."

We should add here that no man is permitted to join the organization referred to, in the Cœur d'Alenes at least, who has ever been a member of the National Guard.

It will be seen that the suggestions of Boyce were soon taken advantage of. During the year 1895 several companies of Idaho National Guard were organized in the Cœur d'Alenes, and on May 13, 1897, five days after the above suggestions of Boyce, six masked men entered the hotel at Mullan, in Shoshone County, about 11 o'clock at night. The parties in the hotel were ordered to turn their faces to the wall, and the bartender was ordered to lead them to the room where the guns which belonged to the State were stored. Forty-six Springfield rifles and about 10,000 cartridges were taken. No clew to them was ever found, but the evidence disclosed in the late prosecutions is to the effect that these same guns were used in part upon April 29, 1899.

Men were driven out of camp from day to day, scarcely a week passing without some outrage being committed upon law-abiding citizens.

On April 17, 1897, the board of county commissioners, the willing tool of these organizations, petitioned the present governor of the State in the following language:

"To His Excellency the Hon. FRANK STEUNENBERG,
"*Governor of the State of Idaho, Boise City, Idaho:*

"SIR: We, the undersigned county commissioners of Shoshone County, of Idaho, in regular session assembled, hereby respectfully petition your excellency to use the authority in you vested and order the disbanding of the two companies of the Idaho National Guard now organized in the town of Wardner, State of Idaho.

"We find from experience and observation that the said military organization is a source of discord and uneasiness to all the citizens of the locality referred to who do not belong to the organization, and is therefore a continual menace to the peace and good order of the county."

After receiving this petition I visited Shoshone County, investigated affairs, and came to the conclusion that said companies of militia should not be disbanded. While there it was repeatedly stated to me that everything was in a peaceful condition and that there was no necessity for said militia companies being kept in existence, and hardly had I left the Cœur d'Alenes when one of the saddest tragedies of that county was enacted.

On December 23, 1897, Frederick D. Whitney, foreman of the Helena and Frisco concentrator, was brutally murdered. About 11 o'clock at night, armed and masked men went to the room where Whitney lodged and took him out of bed. His companion, the assayer of the company, was made to stand with his face to the wall while Whitney dressed. Whitney was then taken outside by his captors, 16 in number. When just below the town, Whitney thought he saw a chance to escape and began running. A volley was immediately fired and Whitney fell. He was taken to the hospital that night and died on Christmas morning.

Although a citizens' reward of some $16,000 has been offered for the arrest and conviction of parties guilty of this crime, to which the State of Idaho added an additional reward of $1,000, no arrest has ever been made. No steps were taken by the county commissioners to investigate the matter; not one cent of reward was offered by them, and not a single effort put forth by the then sheriff to apprehend the murderers.

During the month of January, 1898, a number of parties were driven from the camp, some being badly injured.

On October 21, 1898, Dan Connor, shift boss at the Standard Mine, was ordered to get out of the country within twenty-four hours. The order was given by four masked men armed with revolvers. He pleaded with them that he was a married man, with a wife and children, and could not get away in so short a time. He was finally granted three days, being notified that if within that time he had not left the country they would dispose of him, together with his wife and children. Mr. Connor immediately went to Wallace, Idaho, and arranged to leave the country, of which he had been a resident for several years. The charge against him was that he had discharged some men.

So I might go on recounting a number of other instances in which this high-handed and criminal method was employed to drive good citizens out of the country. But enough has been said to disclose the lawlessness which prevails and which has prevailed for years, and I beg to state that in all these instances the officers of the county have remained inactive, the county commissioners and the sheriff apparently conniving at these crimes; and no one, therefore, has been punished in all these instances.

Upon April 13, 1899, the following notice was posted, which marks the beginning of the immediate trouble in question:

"NOTICE.

"WARDNER, IDAHO, *April 13, 1899.*

"At a regular meeting of the Wardner Miners' Union, No. 18, W. F. M., held on the above date, it was decided to request all men employed in and about the Bunker Hill and Sullivan mines to make application for admission into the Wardner Miners' Union at once.

"M. A. FLYNN, *Committeeman.*"

Just about this time Ed. Boyce, president of the W. F. M., visited Wardner and met with the union. A few days thereafter the union made a demand for an increase in wages, which the manager, at that time, stated he could not concede. Shortly thereafter the superintendent of the mine informed the men in the employ of the company that he was authorized by the Bunker Hill Company to state that all of its employees would, in the future, be paid $3 and $3.50 per day. This was the same wage that was being paid by the adjacent mines. A committee from the Wardner union next demanded that the Bunker Hill and Sullivan Company recognize the union, which involved the discharge of the nonunion employees. This the Bunker Hill and Sullivan Company refused to do. The union then began a system of attack upon the employees of the company upon the streets and elsewhere in the town, which was kept up until about the 27th of April, 1899. Upon the morning of the 29th of April, 1899, about 1,000 masked and armed men, coming from Mullan, Burke, Gem, and Wardner (having taken possession by force of the train), congregated near the mill of the Bunker Hill and Sullivan Mining Company.

After congregating there, and within a very few minutes, they put several hundred pounds of dynamite in the Bunker Hill and Sullivan mill and literally destroyed it, the dynamite used having previously been stolen and loaded in a car of the stolen train at the powder house of the Helena-Frisco mine, some 15 miles distant from the Bunker Hill and Sullivan mill. They then took possession of some of the employees of the company, and after having possession of them for about thirty minutes began clubbing them with their guns, at which time the captives started to run and were fired upon by the mob. Two of them were shot and one killed. Just a few moments before a member of the union had been shot by one of the mob, and it was proven upon the trials which followed afterwards that he was purposely killed because he was suspected of being a spy. The members of the mob guilty of these crimes seemed utterly depraved in every way, as many of them wore masks made of American flags, and when the dynamite exploded, destroying the mill, the shout, "Down with America!" was everywhere heard. These facts were clearly proved in the trials which followed.

Martial law was declared, troops were sent into the Cœur d'Alenes upon request of the governor of the State, and a special term of court was called for the purpose of bringing to light those who were engaged in the riot of April 29.

The first matter that presented itself was that of the county officials, or rather the county commissioners and sheriff. These officials were impeached and removed from office by decree of the court for misconduct in office, and particularly in encouraging and conniving at the crime of April 29.

A grand jury was afterwards called and a number of parties were indicted for murder, among others, Paul Corcoran, one of the prominent officials of the union. A great many of the prominent officials of the union immediately fled and have not yet been intercepted. Paul Corcoran was brought to trial, and the trial resulted in a conviction of murder in the second degree.

The evidence disclosed that these crimes of April 29 were the result of well-arranged conspiracies, beginning about April 13, 1899. For instance, the evidence showed that at Mullan, upon the morning of April 29, these men, under orders and with military precision, formed in line in front of the miners' union hall and took up the march from that point to the railroad; that upon the way down they stopped by the roadside and took from a place of hiding a large number of rifles and then marched on down to Wallace; that at Burke the miners collected in and about the miners' union hall, some of them carrying guns at the time upon the public street and unmasked, and about 10 o'clock marched to the depot, covered the engineer with rifles, and took complete control of the train; that at Gem they met in the miners' union hall, where guns and masks were in readiness and were handed out to the parties coming in, the room being darkened, and the guns were taken from a hiding place under the desk near where the president of the union sat. These parties then marched to the depot and met the train coming down from Burke. They all met at Wallace and still retained possession of the train, compelling the engineer to pull them to Wardner; that just before they arrived at Wardner the Wardner union came out a mile and met them, and by the time they arrived at the Bunker Hill mill there were about 1,000 of them in all, and about 300 armed and masked.

In the meantime, on their way down, they had broken into the Helena-Frisco powder house, near Gem, and taken possession of about 800 pounds of giant powder, which they afterwards used in blowing up the mill. The crowd seemed to be at all times under the control and acting in obedience to the commands of superior officers, marching and obeying orders with military precision.

The sheriff of the county was one of the parties who went down on the train and was with the crowd during the day.

As has been stated above, the trial of Corcoran resulted in a conviction of murder of second degree, and he is now serving his term in the State penitentiary. There were seven other men indicted for murder, whom the State had made preparation to try, who escaped prison about ten days before trial was called. The State has at no time lagged in the trial of those who have been held under indictment.

The defense made serious efforts for a continuance in the Corcoran case, which the State opposed and forced trial. The defense was also making preparations for continuance in the other cases when the prisoners escaped. The defense has never asked for trial in a single instance of parties who were held under indictment but upon the other hand when the State has been asking for trial opposed trial. It is true that after the escape of the seven prisoners who were held under indictment, the defense appeared in court and asked for trial of the other parties in prison, but these parties were not held under State indictment, nor for the purpose of trial in State courts, but by reason of the fact that they were under indictment by the Federal grand jury, or retained in prison under authority of the martial law because of their dangerous character.

The blowing up of the Bunker Hill and Sullivan mill and the affairs of April 29 were openly indorsed by the then official organ of the Western Federation of Miners, which was edited by J. R. Sovereign. The following are some quotations from his editorial pages:

"For this foolhardy policy the Bunker Hill has suffered an immense loss, and no one who understands the real situation has any sympathy for them."

Again he says:

"The company will need military protection for forty years after their new mill is completed."

Again he says:

"The Bunker Hill company wants military protection while completing their mill at Wardner. That is not necessary. Let the company show the disposition to treat the organized miners with the same respect the other mines apparently give to miners and pay the union rate and no protection will be needed."

This includes an admission and a threat. This newspaper is still the mouthpiece of lawlessness and is, with each issue, practically encouraging those who committed the crimes of April 29 to continue in such work when the opportunity presents itself.

The same paper brazenly admitted that the destruction of property and murders of April 29 were the work of the so-called labor organizations of the Cœur d'Alenes, thus clearly proving them to be criminal organizations, as is evidenced by the following quotations:

"The streets of Wallace took on an air of excitement, and before the train proceeded to Wardner with its human freight on its mission of destruction, armed men walked the streets in quest of an abundant supply of ammunition. It was evident to all that some of the scenes of 1892 were to be repeated, and this time the Bunker Hill and Sullivan Mining Company, at Wardner, 12 miles below Wallace, was to be the victim of a forceful demonstration on the part of the organized miners of the Cœur d'Alenes. On the train were about 200 members of the organization at Mullan, and the balance was composed of men from the various mines and outside works on Canyon Creek.

"The train reached Wardner at 1 o'clock and the work of clearing the country of all opposition was begun. A detachment of union miners, armed with Winchester rifles, was dispatched to the mountain side beyond the mill, and the work of placing under the mill 3,000 pounds of dynamite, taken from the magazine of the Frisco mine at Gem, was commenced." (Idaho State Tribune, May 3, 1899.)

At the present time, in the Cœur d'Alenes, as we have stated, quiet apparently prevails, but it is solely by reason of the presence of the Federal troops. Threats are constantly being made against those who are seeking to enforce the law and a spirit of revenge manifested, which no one upon the ground can doubt is simply waiting for the removal of the troops to be put into execution.

A large number of these parties who were in the riot of April 29, it is true, have left the country, but most of them have simply gone across the line to Butte, Mont., and to British Columbia, and will return immediately upon the removal of the troops. Upon their return there will be an inevitable conflict, which, in my judgment, will result in much bloodshed.

The above are some of the facts which compel me to ask for the detention of the troops in the Cœur d'Alenes. I certainly should be glad if conditions were such that I could consent to their removal, but to do so would, in my judgment, be to reenact the scenes which have disgraced our State for years, and which we are now well under way to end, as I believe, for all time. I have but one purpose, and that is to protect the property and lives of the citizens of Shoshone County. Much has been accomplished, but the work is not finished.

Again, taking it for granted that a state of insurrection existed on April 29, 1899—and this fact is generally conceded—who is to determine when the insurrection has ended? Who is to determine when the civil authorities are in full and complete control? Is it the official who proclaimed the insurrection, or is it to be determined by those, and the sympathizers and instigators of those, who are guilty of bringing about the insurrection? Fortunately for this present crisis the light of experience makes plain the path. In 1892, under an exactly similar condition of affairs, a seeming calm apparently justified the revocation of martial law and the withdrawal of troops after less than three months of operation, and the result was one of untold disaster. A section of community given over for years to terrorism and crime can not be purged in three months or five months, as was well illustrated by the conditions once existing at Rock Springs, Wyo., where it became necessary to station the troops for a term of twelve years.

A condition of affairs that it has taken years to create of necessity can not be superseded within a few months. That idea that the enjoyment for a few months of what might properly be termed enforced calm is evidence that normal conditions have been restored has been the mistake of the past in dealing with conditions in the Cœur d'Alenes.

Our people look to our institutions for absolute protection in the guaranties of the Constitution, which are those of enjoying life, acquiring and possessing property, and pursuing happiness. These things have not been enjoyed by the good people of the Cœur d'Alenes for years, and we insist can not be at the present time without the aid of Federal troops.

While it is not necessary to inform you of the relative positions of the State of Idaho and the General Government in this matter, as this status is clearly defined by statute, still it may be proper, for purposes of general information, to add that the State of Idaho is responsible for all that has been done in Shoshone County relative to the call for troops, the arrest, detention, and care of prisoners, the regulations under which the mines can and have been operated from the date of the insurrection up to the present time, and the regulation of all matters concerning the employment of men in these mines, all of the above matters having been under the immediate supervision, control, and direction of the officers and representatives of the State of Idaho, and not in any way of the Federal troops. I further state that the State assumes and acknowledges all responsibility for the manner in which affairs are conducted in the Cœur d'Alenes so long as martial law, as proclaimed, prevails.

In concluding my answer to this portion of your letter will say that, in my judgment, the necessity still exists for the detention of troops in the Cœur d'Alenes, and I ask that they be permitted to remain to assist us in policing the situation.

As to the guarding of the prisoners, I will state that on November 1 the State will be able to relieve the troops of all such duties. This has been our desire from the beginning, and it has been our intention at all times to perform this service as soon as we could, and we have done so in so far as it was possible. We have had some 30 special deputies engaged in the duty of arresting, conveying, and guarding these prisoners. You will understand that we have had at times some 600 or 700 parties under arrest, or detention, but that number has been reduced to 65, and after this sitting of Federal court at Moscow the number will be much less. I state, therefore, that we will be able to take entire charge of the prisoners after November 1.

It should be stated here, however, that these men have not been held under or by reason of indictments upon the part of the State, but because they were men whom we could not permit to be at large under the present condition of affairs in that section. The men who were held under indictments found by the State grand jury, and whom we desire to try, escaped prison a few days before the regular term of the court, at which time all preparations had been made to try them.

I have the honor to be, very respectfully, yours,

FRANK STEUNENBERG, *Governor of Idaho.*

Hon. ELIHU ROOT,
Secretary of War, Washington, D. C.

The Cœur d'Alene district, famous for the richest lead and silver mines of the world, has for years been the scene of the most flagrant lawlessness that stains the pages of American history.

The destruction of the Bunker Hill and Sullivan mill and other property and the murder of two miners on April 29, 1899, is the culmination of a series of labor troubles that had manifested themselves in various ways since 1892. A secret organization controlled the civil authorities in Shoshone County. The mandate of the "dark lantern" order was more powerful than the law of the State. Whatever was the desire of the secret clan became the law of the community. Sheriffs connived at the actions of criminals. Newspapers succumbed to the baleful influence and became willing organs to justify damnable conspiracy and inflame prejudice against men who would not become slaves to the lawless element. Men suddenly disappeared, leaving no trace behind.

This secret clan wore the cloak of an honored institution to perpetuate its infamy. It was secure in its intrenchment and defied law and order. This state of affairs had existed for seven years.

On July 12, 1892, the governor of Idaho asked President Harrison for troops to suppress riot and insurrection in that State.

The report of Col. William P. Carlin, U. S. A., to the War Department of the desperate methods of the dynamiters on that occasion, shows the conditions prevailing in this section and the criminal character of the men who perpetrated the crimes and assisted in the wanton and wholesale destruction of property.

HEADQUARTERS UNITED STATES TROOPS IN THE FIELD,
Wardner, Idaho, July 26, 1892.

The ASSISTANT ADJUTANT-GENERAL,
Headquarters Department of the Columbia, Vancouver Barracks, Wash.

SIR: I have the honor to submit the following report on the operations of the troops under my command while engaged in suppressing the riots or insurrection in the Cœur d'Alene mining district in this State, viz:

On the morning of July 12 I was notified by telegrams from Col. J. F. Curtis, inspector-general Idaho National Guard, then at Wallace; W. B. Heyburn, attorney for the mine owners at Wardner, then at Spokane; Governor N. B. Willey, at Boise, of the outbreak of the rioters or insurgents, and about 2 o'clock p. m. I received a dispatch from Major-General Schofield, commanding the Army, saying that orders had been sent to headquarters of the department directing me to move troops to the scene of the disturbance, and that on receipt of such orders I would move accordingly.

It was after 3 o'clock p. m. when the orders from the department commander, Brigadier-General Ruger, were received; but preparations for the movement had been in progress nearly all day.

At 4.30 I marched the four companies of the Fourth Infantry at Fort Sherman, H, D, F, and A, to Cœur d'Alene City and embarked on the steamboat as soon as it was ready, namely, about 5.30 p. m. The boat took us to Harrison, near the head of the lake, in two hours. There we found a train of the Union Pacific Railroad awaiting to take us toward Wardner, the first point at which the rioters were reported to be in great force, and where the principal mines were located. There being no adequate facilities at this point, Harrison, for landing wagons, animals, and supplies, it was late in the night before this was accomplished. And here I found Col. J. F. Curtis, inspector-general of the Idaho National Guard, and representative of the governor of the State, with whom Governor Willey had requested me to advise and cooperate. He informed me that he had that day passed through the camp of the rioters near Wardner, under flag of truce, and estimated their number at 500, all armed with Winchester rifles.

He asked me how many men I had, and being told in reply that I had 168, he said that was not enough; that he had 300 Idaho State troops en route, and advised me to remain at Harrison till his troops could join me.

Colonel Curtis was confident, after personal observation, that the rioters were fully prepared to fight the troops and would do so. I therefore decided to remain at Harrison till early next morning and move up the railroad toward Wardner to Cataldo, 27 miles from Harrison and 12 from Wardner, which I did, arriving there about 9 o'clock. The Idaho troops arrived at 12 m. at Cataldo, but only 192 strong, instead of 300.

At that time I had received the following communication from the manager of the Bunker Hill mine and mill, forwarded by N. J. O'Brien, superintendent Union Pacific Railroad, namely:

"WARDNER, IDAHO, *July 13, 1892.*

"N. J. O'BRIEN:

"Will use every effort to delay any troops coming to Wardner; it is of utmost importance to give opportunity for all our men to leave trains to-day.

"V. M. CLEMENT."

Also the following from the sheriff of the county:

"WARDNER, 13.

"COMMANDER OF TROOPS, *Cataldo*:

"Hold troops at Cataldo, subject to my orders.

"R. A. CUNNINGHAM,
"*Sheriff, Shoshone, Idaho.*"

Having previously been informed that Sheriff Cunningham was under the absolute control of the miners' union and of the men engaged in the riots, I gave no attention to his communication. But I did place implicit faith in the representations and the appeal of Mr. Clement, and believed that my advance to Wardner before the nonunion men had left the mill and mine would cause the rioters as an act of desperation and vengeance to blow up the Bunker Hill mill and massacre the prisoners they had taken from that mine and mill. I was also assured by Mr. Dryden, deputy United States marshal, that he was informed by a friend of his in the miners' union that the bridges between Cataldo and the Bunker Hill mill had been charged with dynamite for the purpose of blowing up the bridges and train of troops. For these reasons, chiefly the appeal of Mr. Clement, through Superintendent O'Brien, of the Union Pacific Railroad, I decided to remain at Cataldo till the morning of the 14th instant.

Early on the 14th I moved forward, having the train stopped at every bridge, and that carefully inspected for dynamite before crossing it. We arrived at the mill just alongside of the railroad at 9 o'clock a. m., and at the depot of Wardner at 9.20.

All was quiet except that several hundred idlers, most of whom had been engaged in the riots, were lounging around the depot to see what the troops were going to do.

The rioters from Wallace, Mullan, and Montana had left Wardner on the night of the 13th, after the nonunion miners had been sent away, and after they had removed the giant powder from the mill. They had placed a ton and a half of this explosive in the mill before demanding of Mr. Clement that all of his nonunion men should be sent out of the country, and announced that the mill would be blown up if he refused compliance. He yielded, of course, to save the property of his employers and the lives of his employees.

A few minutes after arriving at Wardner I received dispatches from the mayor of Wallace that good citizens were being driven or ordered out of town by the rioters and calling for protection.

I immediately sent forward Capt. John W. Bubb's company, Fourth Infantry, and two companies of Idaho State troops to Wallace.

Captain Bubb at once took possession of the town and restored order and confidence on the part of the good people.

At 12 m. a battalion of the Fourteenth Infantry, under command of Lieut. Col. H. A. Theaker, arrived and was at once ordered to Osborn, 6 miles farther east on the railroad and river. Later it was ordered to Wallace, and Captain Bubb's command was ordered to Gem mine and Burke, 3½ and 7 miles, respectively, from Wallace, up a canyon, where the main body of union miners was employed, and where the first outbreak occurred which resulted in the destruction by dynamite of the Frisco mill and the death of many nonunion miners, who were killed by the explosion on the 11th instant.

In this connection it is proper to state that the nonunion men who surrendered to the miners' union at the Frisco mill were sent out of the country by railroad to the Old Mission on the Cœur d'Alene River, where on the 12th instant they were awaiting the arrival of the steamboat to take them to Cœur d'Alene city.

This boat was delayed by having to take my command from Fort Sherman to Harrison, and did not arrive at Mission till about 12 o'clock at night, too late to remove the unfortunate nonunion miners. The rioters at Wardner had been informed during the day that these men were still at Mission, and that some of them had talked of going back to their work with the troops, whereupon an armed party had gone down to Mission on a hand car, and had been joined by others, at and near Mission, where about sundown on the 12th these armed rioters fell on the nonunion men and fired on them, wounding some, and, it is believed, killing some, the number of whom we have been unable to discover. The main body were frightened and ran across the meadows from Mission and into the woods along the river. The armed rioters pursued and kept up the firing until all had been driven into Fourth of July Canyon, or into swamps and sloughs and dense thickets near the river. Some saved their lives by plunging into the river and swimming across and hiding in the brush and swamps until morning, and then made their way as best they could along the river bank till they could find a boat tied up to the banks, or till the steamer came along and picked them up.

The party of rioters did not return to Mission till 11 o'clock at night. I believe that a considerable number of the nonunion miners were killed and that their bodies were thrown into the river or swamps or destroyed by fire. I directed a thorough examination of the region where the barbarous proceeding occurred by a detachment from Fort Sherman and also by Company B, Fourth Infantry, under command of Lieutenant McQuiston. Many men accused of participating in this affair have been arrested, but no dead bodies have yet been found.

To return to the movement of other troops of my command: On the 12th instant, at Fort Sherman, I received a telegram from Capt. W. I. Sanborn, Twenty-fifth Infantry, informing me that he was ordered to join me with three companies of his regiment from Fort Missoula. He was instructed to reply, to proceed to Mullan, and take post there until further orders. When I had learned from Colonel Curtis and other sources that the rioters were in great force, well armed, and resolved to fight the troops, I became uneasy lest Captain Sanborn's battalion might be attacked by superior forces of the rioters and be badly cut up or driven back. Believing it of the utmost importance that the United States troops should not meet with defeat, or even a check, I deemed it best to order Captain Sanborn to return to Missoula and come around by Cœur d'Alene City and join me at Wardner. This is the explanation of what seemed a retrograde movement, or at best an inexplicable one. As it was, one bridge and the railroad at another point were blown up by the rioters in advance of Captain Sanborn; that is, between Mullan and Wallace. Captain Sanborn's battalion joined me at Wardner on the 14th, at 7.30 p. m.

A battalion of three companies of the Fourth Infantry from Fort Spokane, under command of Lieut. Col. H. C. Cook, Fourth Infantry, joined me at the same time and place.

A battalion of 225 men and officers of the Twenty-second Infantry from Fort Keogh, Mont., under command of Lieut. Col. J. H. Page, Twenty-second Infantry, arrived at Mullan on the 15th instant, under instructions sent by telegraph, and remained there. Subsequently, when arrests were being made in great numbers at Burke, Gem, and Wallace, the battalion of the Twenty-second was transferred to Wallace.

On the 15th instant 65 of the miners' union rioters were arrested at this place (Wardner) and placed under guard at my camp. These persons were arrested by deputy United States marshals, deputy sheriffs, or upon their information and that of law-abiding citizens.

Arrests at Wallace commenced at the same time; also at Burke and Gem. In all, over 300 arrests of rioters were made. Those arrested at Burke, Gem, and Mullan were sent to Wallace to be guarded.

On the 19th instant, acting in accordance with information from Col. J. F. Curtis, Idaho National Guard, I proceeded to Lookout, the summit of the Bitter Root Range, with about three companies to arrest a party of armed rioters, numbering about ninety, said to be encamped or lurking in the mountains near that point in Montana. The man who had been directed by the superintendent of the Northern Pacific Railroad at Missoula as guide, and who reported the presence of this party at that point, disappeared from the command, and if the men were in that locality they could not be found.

At Lookout Colonel Curtis and I telegraphed to the governor of Montana for permission to pursue the rioters across the line. Without waiting for a reply we went on to the designated point, but found no one, as stated above. The next day a reply from Governor Toole, refusing the permission asked, was received. The troops were returned to Wallace and Wardner.

As the riot or insurrection seemed now completely suppressed, and nearly all the active participants had been arrested or escaped from the State, and the civil authorities appointed by the governor after his proclamation of martial law and the United States marshal of the State were able to make all further arrests they deemed necessary, there remained nothing more for the troops to do except to guard prisoners. I therefore recommended on the 23d instant that the force be reduced and that all United States troops except three companies be sent to their proper stations.

Under instructions from Brigadier-General Ruger, commanding the Department of the Columbia, the battalion of the Twenty-fifth Infantry from Fort Missoula and that of the Twenty-second Infantry from Fort Keogh were relieved from further duty with my command and started yesterday afternoon to their respective stations.

It is a fact perhaps worthy of the attention of the authorities at Washington to state that a majority of the persons arrested for participation in the recent riots in this region are foreign born, chiefly from Ireland, Canada, and Germany, and a considerable number are unnaturalized.

I take great pleasure in reporting for the information of superior authority that the conduct of the troops under my command has been in the highest degree honorable to them and creditable to the Army. Not an instance of criminal or improper conduct toward citizens or each other has been committed. It would be impossible to find any body of men in any class of society who could have conducted themselves with more propriety than the soldiers of this large command have done in this region during and since the riots. These remarks apply equally to all officers and men of the Fourth, Fourteenth, Twenty-second, and Twenty-fifth regiments of infantry, as well as to the troops of the Idaho National Guard. While no fighting was required, the spirit displayed by all these troops showed plainly they were fully equal to any emergency, and would have defended the honor of the flag in a contest with insurgents and rioters with as much courage as if they had been a foreign foe.

Very respectfully, your obedient servant,

WILLIAM P. CARLIN,
Colonel Fourth Infantry, Commanding.

The conditions prevailing in Shoshone County since 1892, as shown by the testimony of Pipkin and others, is that of anarchy and insurrection, frequently breaking out in open violence and at other times scarcely concealed. The criminal and law-abiding elements do not mix. The hatred between the two is intense. One side or the other must be supreme. They can not exist side by side. In the past seven years the so-called union element has been on top. In that time two mills have been blown up, nearly a dozen men murdered, and innumerable law-abiding citizens run out of the country.

Once before martial law was declared in this same county, and twice before United States troops have been sent there to aid the State in suppressing insurrection and riot.

The courts have been unable for years to punish violators of law whenever and wherever members of these criminal organizations were involved.

The evidence discloses that numerous murders have been committed in that county without trials of the murderers, either from failure of grand juries to indict, or, if trials were had, no convictions resulted, owing to the servile weakness of parties possessing guilty knowledge, or from fear of witnesses to testify and of petit juries to convict.

The proof shows that anarchy and insurrection have, in fact, existed in that county since 1892.

The committee finds that insurrection and rebellion against the legally constituted authorities existed in Shoshone County, Idaho, May 3, 1899; that the governor was justified in declaring the county in a state of insurrection and rebellion, and that the insurrection and rebellion have not been completely suppressed, reference being had to the evidence given in the Corcoran trial, an abstract of which is herein incorporated.

This evidence proves conclusively the existence of a widespread, deep seated, and thoroughly organized conspiracy on the part of certain criminal organizations of miners in the Cœur d'Alenes.

ABSTRACT OF EVIDENCE ADDUCED AT THE TRIAL OF PAUL CORCORAN.

In the course of the hearings before the committee the complete record in the trial of an action entitled "The State of Idaho against Paul Corcoran" was introduced in evidence with the understanding that such parts thereof as were deemed pertinent to a complete investigation of the charges set forth in the resolutions might be used by the committee.

Paul Corcoran was duly tried in the district court of Shoshone County, Idaho, on the charge of murdering one James Cheyne, on the

29th of April, 1899, having been previously indicted by a grand jury of said county. The jury to try Corcoran was selected from the county of Shoshone, where the crime had been committed, and he was defended by able counsel, and at the conclusion of a trial lasting several weeks was found guilty and sentenced to 17 years' imprisonment, which sentence he is now serving in the Idaho State prison.

Mr. Cheyne, together with one John Smyth, were shot and killed in the riot of April 29th, 1899, which resulted in the destruction of the mill and property of the Bunker Hill and Sullivan Mining Company.

In prosecuting Corcoran the State sought to prove, and as we believe clearly proved, a conspiracy; that this conspiracy consisted of an organized body of men who had associated themselves together for the purpose of committing an offense against the laws of the State of Idaho, by endeavoring through force, intimidation, and otherwise, to prevent certain employees of said Bunker Hill and Sullivan Mining Company from working, and further in attempting to drive said employees away from their place of employment.

It is only in so far as the evidence given in the Corcoran trial shows a conspiracy as existing in the Cœur d'Alenes that the same is material, and only such portions as tend to prove such conspiracy will be here given.

If the evidence in this trial clearly shows that a conspiracy existed on the part of the several miners' unions located at Burke, Gem, Mullan, and Wardner, comprising practically all the mining camps of the Cœur d'Alenes and involving from 800 to 1,000 men, then we can more readily understand the motives underlying the action of the State authorities, and can readily justify the conduct of the United States troops.

The Bunker Hill and Sullivan Mining Company being the only company in the Cœur d'Alenes employing nonunion miners, had on this account, and for years past, aroused the hostility of all union miners employed in the camps and mines in and about the four towns above mentioned. This hostility culminated in the riot and bloodshed of April 29. How deep seated and widespread this hostility on the part of the union miners was will be shown by the evidence adduced in the Corcoran trial. The witnesses are taken up in the order in which they testified at the trial.

Thomas M. Ames, testifying in behalf of the State, stated that he had resided at Wardner, Idaho, about two years and four months; that his business was mining; that he had worked for the Bunker Hill and Sullivan Mining Company, and had been a member of the Wardner miners' union; that he had worked up to the 23d of April, 1899, with the Bunker Hill and Sullivan Mining Company. On the 23d of April the Wardner union had a meeting which lasted all day. This was on Sunday. In the evening a committee was appointed and it was sent down to see Mr. Burbidge, who was manager of the Bunker Hill and Sullivan Mining Company. This committee reported in the afternoon and framed a resolution to the effect that they were to go in the evening and solicit all nonunion men to join the union. There was another meeting Monday night, but witness was not present, having been sent out by the president of the union to watch the Last Chance mill, a resolution having been passed by the union directing that 12 men watch the premises of this mine and relieve one another, the object being to protect the men from danger. Witness was relieved at half-past 1 o'clock in the morning, but the meeting in the miners' hall was still in progress.

On the morning of the 29th of April, the day the mill was blown up, he was notified to attend a miners' meeting. On this morning witness noticed that there was quite a rustle among the miners' union men, but could not find out what was on the programme. The only thing witness could find out was that all the union men were to meet a train at the depot at 11 o'clock. Several members of the union told him this. They told witness that he need not go down. The reason was that witness was pretty well acquainted with them. They told witness that something unusual was to occur, and they told him to stay on the street. The reason they gave why witness should not go down was that part of his hand was lost, and they told him he was too easy to identify. Chris Eri and A. S. Murray told witness not to go down, both being union men. Witness saw both union men and non-union men going down from Wardner toward Kellogg that morning; there were a good many on both sides and some of them had bundles. On cross-examination witness testified that prior to April 23 the Bunker Hill and Sullivan Mining Company discharged union men, but after the 23d the union men were called out by the union.

John Clark, testifying in behalf of the State, stated that he resided in the town of Mace, near Burke, and was a miner by occupation; that he had been a resident of that vicinity for eight or nine years and was a member of the Burke miners' union, having been recording secretary during the month of April, and that the central miners' union was composed of delegates from each union; and that the Western Federation of Miners consists of the subordinate lodges of the miners' union—of the subordinate unions combined; that in each union two delegates are elected and sent to the federation, and these delegates elected by the several unions constitute the convention. Witness stated that he was acquainted with defendant Corcoran, and had been for three years while he was residing in Burke; that Corcoran on the 29th of April was financial secretary of the Burke miners' union. On the morning of the 29th of April witness got onto the train which left Burke; that there were about 150 on the train when it left Burke; and that the train consisted of box and flat cars and a coach. Quite a number of passengers got on the train at Mace; there were quite a number whom witness recognized as miners working in the mines at Burke, and presumed that they were members of the union.

When the train got to Kellogg witness estimates there were six or seven hundred people on the train, perhaps more. Witness could not say just at what time he noticed the first man masked on that train; it must have been down pretty close to Wardner. Witness got into a box car and stayed there during the time he rode down. There were none who got into the car with him. Witness saw masked men get off the train after he reached Kellogg. Those men with masks also had arms. When the train went back to Burke witness returned with it, and thinks that about the same parties went back as went down on the train, and about the same number. On going back witness thinks he saw Corcoran sitting on the top of a box car on this train; it was while he was walking from one car to another, and at some place between Wardner and Wallace. Does not think he was masked, for he could see his face.

Frederick Burbige testified that he resided at Kellogg and was manager of the Bunker Hill and Sullivan Mining Company, and had been such for four or five months. Prior to that time he had been assistant manager for three years. On the 23d of April a demand was made upon the company by a committee, some of whom were members of the miners' union, stating that they came as representatives of the union and made a demand for higher wages and a recognition by the company of the miners' union, John Watson acting as spokesman. Witness replied that if they represented the Bunker Hill and Sullivan Mining Company's employees he would be glad to hear anything they had to say. Watson demanded an increase of wages to $3.50 all around and a recognition of the miners' union. Witness replied that he would have to submit that matter to the other officers of the company; that he would do so by wire and advise the committee of the result; that as it was Sunday he would probably be unable to reach any one that day, but would reach them the first thing the following day. The committee replied that if that was all the satisfaction they could get they better go, and they did go.

On the 26th of April as witness was returning to Wardner from Spokane he received a telegram in reference to stopping his men while on their way to work that morning. The company's tramway was in the possession of an armed mob of men from 10 o'clock in the morning until 10 o'clock in the evening. On the morning of the 29th of April the mill was in operation. Witness received information that all the mines on Canyon Creek had closed down and that the men were going to Wardner in a body. Upon receipt of this information witness informed the superintendent of the mine and also the foreman of the mill and told them to keep the mill running up to the last moment and not to stop it unless forced to. This was between 8 and 9 o'clock in the morning. Later witness got information that the mob that was coming up were armed and masked and had broken open a powder magazine and stolen a large amount of powder. Thereupon witness told the foreman of the mill to close it down and gave instructions to him and the superintendent of the mine to abandon the property and to tell the men to get out and take care of themselves, which was done.

No other organizations or unions were refused employment or discriminated against except those men belonging to the Cœur d'Alene miners' unions. The reason for this was that on a prior occasion when the company did not discriminate against union men and other employees that the union men intimidated the nonunion men and demanded that all nonunion men should be discharged. On the 23d of April witness increased the wages to the scale which had formerly been in force at the mine, namely, $3 per day for laborers and $3.50 per day for miners. His mine was a dry mine, as distinguished from a wet mine, and employment in a dry mine is much pleasanter and much safer, and employment is not worth so much money as in mines where conditions are not so favorable. Witness has had no trouble in keeping the mine filled with men at the former rates. There was no trouble between himself and his employees on the 29th, nor was there any on the 27th.

Albert Burch testified that he resided at Wardner and was superintendent of the Bunker Hill and Sullivan Mining Company, and was such on April 29, 1899. On the 23d, 24th, and 25th of April about 100 employees quit of themselves. The first positive information witness had as to agitation and proselyting among his employees was a notice posted up on the 19th or 20th of April. On the evening of April 22 he found there were 17 members of the miners' union working in the mine and he ordered the shift boss to discharge them, which was done on the morning of the 23d. On the same morning notices were posted up, calling a meeting of the Wardner miners' union and its sympathizers, to be held at union hall at 7 o'clock in the morning. On this morning about 40 or 50 of his employees did not go to work, but went down town. About 10 o'clock that morning Mr. Burbidge telephoned witness that he had been waited upon by a committee representing the miners' union and that a demand had been made upon him for an increase of wages and recognition of the Wardner miners' union. Thereupon witness went down town and saw a large number of men going and coming from the union hall, and from what he could see a meeting was in progress there.

About half past 5 o'clock p. m. about 100 men came up to the mine and Ed. Boyle acted as spokesman, using this language: "Gentlemen, we come here to show you the strength of the Warder miners' union. There is only about half of us here. Some are working in the other mines. We have made a demand upon the Bunker Hill and Sullivan Company for an increase of wages to $3.50 all around and the recognition of the miners' union. That demand has been refused and we have declared a strike against the Bunker Hill and Sullivan mine. We now ask all of you to come to a meeting which will be held in union hall. Leave the Bunker Hill and Sullivan mine and join us in this strike." Thereupon witness addressed the following remarks to the employees of the company: "I had been authorized by the management of this company to increase the wages of all miners from this day from $3 to $3.50 and all laborers from $2.50 to $3 per day, and inasmuch as the Warder miners' union had declared a strike against the Bunker Hill and Sullivan Company any who belong to that union can get their time at the office." Thereupon the men withdrew to a point 200 yards below the mine, lined themselves up, and when the day shift came out witness repeated the same proposition to them. That night or the next day forty or fifty of his men quit. They were not discharged.

On Tuesday evening, the 25th, about 250 or 300 men with the same spokesman came up to the mine and made the same demands, giving notice that this would be the last time the men would be asked to leave and join the union. If they did not come that night they would have another proposition to make to them later on. That night 3 more men left the company's employ. On the morning of the 26th witness went down to the dump of the Bunker Hill and Sullivan mine and saw from 10 to 20 armed men moving back and forth near the Last Chance mine. Several of his employees were proceeding to the mine and were forcibly detained and driven back by these men. That same morning the tramway was stopped. That afternoon witness was visited by Sheriff James D. Young and the county assessor, Michael J. Dowd. Sheriff asked witness if there was not some way in which this matter could be fixed up. Witness replied that if the members of the miners' union would surrender the tramway, which they then had under guard, and would stop interfering with his men who were going or wanted to go to work, he would do all in his power to bring about a meeting of a committee of his former employees to try and effect a settlement. On the morning of the 29th witness was informed that there was a large number of armed and masked men coming down from Canyon Creek toward Wardner; that they were bringing with them a large quantity of powder which they had stolen from a magazine on the way, and he was advised to tell all men to get away, to leave all the property to their mercy and each man save himself. Witness started out over the hills. About 2 o'clock he saw smoke issuing from the place where the Bunker Hill mill was located and a few minutes later he heard three distinct explosions.

Joseph Kendall testified in part and in substance as follows: That he resided at Wardner and was shift boss in the Bunker Hill mine for about one year. On April 23 witness saw a crowd of about 125 or 150 outside of the union employees of the mine. Ed Boyle, who was president of the Wardner miners' union, was spokesman. Heard Boyle say, "The strike is now on." On the 25th about 150 of the union employees of the Bunker Hill and Sullivan Company were led by Mr. Boyle. They stopped some of the men who were working for witness; told them that they would have to join the union. On the morning of the 26th witness saw a crowd at the Last Chance concentrator between 6.15 and 6.20 in the morning. Boyle had charge of the crowd. Witness came up and was told that he couldn't go to work; wouldn't be allowed to go to work; that he could work when the soldiers were there. When men approached to go to work they were told by the crowd that they had come for their answer about joining the union, and that they would not be allowed to work. About 20 or 25 men working for the Bunker Hill and Sullivan Company were turned back at this time. The men in this crowd were armed. One man pulled a revolver and said he would give the men (those going to work) two minutes to leave or they would die. John Doyle was the man who drew the revolver. Witness believed that he was a member of the Wardner union. Saw a Mr. Murray pull out a watch at about the same time as Doyle pulled the revolver, and heard Murray say that if anyone were there in four minutes he would die. Murray was speaking to the Bunker Hill and Sullivan men. At this time there was no trouble between the Bunker Hill and Sullivan Company and its employees.

Ike E. Rouse testified in part and in substance as follows: That he lived at Wardner and worked as a miner in the Bunker Hill and Sullivan mine. On Sunday, April 23, a large body of men came up to the mine soliciting the miners to join the union. Witness on the 25th saw a crowd of about 150 men who claimed to be union miners and headed by Ed Boyle, and demanded that they join the union. Wednesday morning, April 26, witness started to work but was stopped at the Last Chance concentrator by these union men. There were about 300 of them. Ed Boyle was spokesman and he told us to wait there a few minutes, that he wanted to talk to us, and said that we could not work any more; and during his talk to us he said that it was no use for us to try to go to work, because it was impossible, and that we could not work there any more unless we worked under soldiers. He said then, "We are supported by the Western Federation of Miners, 30,000 strong." Witness saw several men with revolvers in the crowd, and he and his companions were held there at the point of a revolver and told that they had four minutes to leave the ground. Witness thereupon went home, as he was not allowed to go to work. Afterwards witness saw the main body of this crowd go to a boarding house, when he heard a shot fired. Later, about twenty came to his boarding house and asked him to join the union. The crowd at the concentrator were union men; most of these belonged at Wardner, at the Last Chance and Bunker Hill mines, but none of them were then working in the Bunker Hill mine. Some of the others belonged to Canyon Creek.

J. W. Taylor testified in part and in substance as follows: Resided at Wardner; worked on the tramway for the Bunker Hill Company; was so engaged in April, 1899. On the morning of April 26 he started to go to work and got as far as the Last Chance Mill and there a body of union men stopped him and said he couldn't go any farther. There were about 200 men there. They said that they had come to give them all a chance to join the union and that would be their last chance. Mr. Boyle, president of the Wardner union, said that they (employees of the Bunker Hill mine) could not work any more there unless it was under the protection of soldiers, and they gave them four minutes to get down the hill in, and said that if any man was standing there when the four minutes were up he would die; so he pulled out his watch and a fellow in the crowd pulled a revolver. Witness thereupon went back to his boarding house. The crowd followed him there and said they would make examples of some of them. They came right into the house. Some of them had revolvers and they ordered them to go down the hill, and some of the boys started down the street as far as they could go, and during that there was a shot fired through the cellar door and kitchen. A fellow took witness down the street two or three blocks and told him it was not too late to join the union. Witness replied that he did not care to do that. Thereupon he was told that the best thing he (witness) could do was to get out of town and stay out.

J. S. McCall testified in part and in substance as follows: Resided at Wardner; was an engineer and was working at the Bunker Hill and Sullivan mine. Witness was at Mrs. Black's boarding house about 200 feet away at a point in the road near the Last Chance concentrator, where a crowd of about 200 men were stopping men from going to work. Mr. Boyle, president of the union, was at their head. Witness recognized and gave the names of several who were in the crowd. These men told witness that they were members of the miners' union. Saw employees of the Bunker Hill and Sullivan mine after going to work coming back shortly after with the crowd following them. When the crowd got in front of the boarding house one of them said, "These men (the Bunker Hill and Sullivan men) having been living for several days; we ought to make an example of one or two of them." Thereupon another said, "What will we do with them?" Another said, "Let's rush them down hill," and upon that they all made a break for the house, and when they got up near the door one of them pulled a big gun and said, "I want every one of you fellows to get out of this house right away," and in no time they were all out except me (witness), and one of them said, "The night shift must be upstairs; let's get them out." Some ran on through the house and some ran right upstairs, and then one of them said, "There goes two or three of them back of the house," and Boyle said, "Never mind. The men with the Winchesters will get them," and they then came down stairs with those men, leading them out of the house. Witness saw four men with Winchesters between the boarding house and the Last Chance mine.

The testimony of Mr. Taylor and Mr. McCall is substantiated in every particular by the testimony of W. B. Sutherland, a resident of Wardner and an employee of the Bunker Hill Company.

Bertha Bernard testified in part and in substance as follows: She resided at Wardner for about ten years. On April 26 she was residing in Mrs. Black's boarding house. With reference to the firing of a shot on that occasion witness testified as follows: "I went in with the rest of them and they ordered them (the Bunker Hill men) to come out, all the scabs. We will shoot them dead. We will kill you. Just then Mr. Keel, a merchant in Wardner, stepped in and grabbed up an ax and said, 'The first one that enters I will kill him,' and a fellow grabbed a gun, I believe they call him Mr. Doyle, and I grabs him and begged him not to shoot. He said, 'I have respect for ladies,' and he drew the gun away and I fainted. Someone said, 'Come out,' and someone fired and they drove the boys down the hill." Witness identified several of the mob as from Canyon Creek, about six of them, that she knew to be union men, because on July 11, the year before, she saw them at the celebration and they had badges on and heard them state that they were union men and went to the lodge.

E. F. Orr testified that he had been a resident of Wardner for a little over two years, and worked in the Bunker Hill mine. Saw the crowd at the Last Chance concentrator on the morning of April 26 stopping men from going to work. Recognized and gave the names of 30 or 40 members of the crowd and stated that they were union men. Heard Mr. Boyle state that they were there representing the union. Heard the order given to get down hill in four minutes and saw a revolver drawn.

Joe Riddell testified in part and substance as follows: Lived at Mullan, Idaho, in the latter part of April, 1899, where he was working as waiter in the boarding house of the Hunter mine. Came down town at half past 7 on the morning of April 29. Saw a whole lot of men on the street and wondered what they were going to do. Witness was in the vicinity of the miners' union hall in Mullan and saw all the men going upstairs to the hall. Some of these men were working in the Morning mine and some of them in the Hunter mine. These men stayed up in the hall about an hour and then they came down from the hall and all lined up about four in a line, and witness estimates there were about 300 of them. After they had lined up they marched down to Wallace. Witness went with them and heard one man say they were going down to Wardner. He was in the end of the procession with some Swedes. There were about three men on horseback. They came way behind. Witness identifies them. There were two men at the head of the procession who had guns. Before the procession got to Wallace, at Turner's place, a man gave witness a gun to go to Wallace to get some cartridges for it, 38 or 32, and witness took the gun and got the cartridges for it when he reached Wallace. He was running around town to catch the train, and the men on the train were nearly all armed with guns. When he got to the train he saw all the men get onto it. All the Burke men were there and Gem and the train was loaded down with them. Saw lots of arms and saw masks. The men that came down from Mullan, some of them had masks on and some of them didn't.

At Turner's Place, above Wallace about 2 miles, witness saw guns dug out of a manure pile by men from Mullan; thinks that there were about three boxes of them. The manure pile was about 50 feet or more from the road. It was at this time that witness was given the gun for which he got cartridges. These guns which were dug out of the manure pile had gunny sacks over them. The men from Mullan took these guns. Witness, continuing, testified as follows: "When I got down here (Wallace) I got on the train and was looking around for the man who gave me the gun and I could not find him. I put the gun in my pocket and when I was going down on the train I had it in my pocket, and a fellow seen it sticking out and said, 'Joe, you had better give that to me,' and I handed it to one of the men. I do not know what his name was, and I will swear to it." Witness went to Wardner and stayed there until all the men went back to Mullan, going back on the same train that he rode down on. Witness names and identifies ten men who were in the crowd from Mullan, and names several whom he knew carrying guns on that day. When witness went up to the Hunter mine, where he worked, on the morning of the 29th, the men were all dressed up, and witness asked Fred Marks and Marcus Daly where they were going and was told that it was none of his business. Saw no men around the mine that morning in their digging clothes. Morris Means came up to the mine that morning and told the men that they had to go downtown.

John Anderson testified in part and in substance as follows: Has been a resident of Mullan for two years, engaged as miner in the Morning mine; has been a member of the Mullan union, and was such a member on the 29th of April, 1899; was working on the day shift. The men did not work in the Morning mine on the 29th of April, the day the Bunker Hill and Sullivan mill was blown up; they said they were going down to Wardner. On that morning the miners' union had a meeting, which was held about 8 o'clock; it was called by the president, Charles Olsen. Witness was present about two minutes. The only decision was that they were going down to Wardner; did not know why; did not hear very much that was going on there. The hall was full, and witness just went inside the door and walked on; heard them say they would not mask, because they were all good citizens; heard a couple of fellows stand up and say they would not put on any masks, and they said "All right." After the meeting was over the men present walked down as far as Wallace; quite a gang came down, can not say how many; there were about 100 anyhow; the men were members of the union. Witness came down, because he wanted to go with the rest of the crowd; another reason was that they were all told to go down by the president of the union, Mr. Olsen.

Before getting to Wallace witness saw some guns; thinks that they had some guns up here (Wallace); he was walking on the railroad and thinks they had some guns on the other side. Saw no masks on the way down to Wallace from Mullan. When they arrived at Wallace they went over to the depot when the train came down from Gem. There were men on the train and some of them had guns. After getting onto the train they proceeded to Wardner, arriving there about 12 o'clock. Recognized no one who came down on the train outside of those who came from Mullan. Most of the men who came down from

Mullan were union men. Witness on cross-examination testified that he had been imprisoned in the bull pen for about seven weeks.

Swan Holt testified in part and in substance as follows: Resides at Mullan and is a miner. On the 29th of April, 1899, he was working in the Morning mine and was a member of the Mullan Miners' Union. There was a meeting of the miners upon that morning. Witness was notified by some boys when he was going to work that morning. A big crowd of boys came down that morning when witness went out there; that they were all going down to Wardner that day. Witness then went home and later went up town and found that they were holding a meeting in the hall, but he did not go up. Witness saw the parties attending the meeting come down. Witness's partner, John Anderson, told him that they all had to go down to Wardner; he was at the meeting. The people who had attended the meeting then lined up outside the hall and started off for Wallace, witness going with them; there must have been 200 of them. Witness knew quite a number of them, and those that he knew were union men. Saw no arms before they got to Wallace, and saw some arms taken from a place the other side of the track about a mile or a mile and a half from Wallace; after that saw some men coming out, and they had some guns; saw no masks in the crowd before they got to Wallace on the train. Went on the train from Wallace to Wardner; there were a couple of box cars, a flat car, and passenger coach in the train; could not say exactly. Some of the men on the train were masked and some were not; saw some armed men on the train. Witness was imprisoned in the bull pen, and was released the day before, being called as a witness. Witness did not know what they went down to Wardner for, nor did he understand what the armed and masked men went down to the Bunker Hill mill for, nor for what they went down to Wardner.

Emil Anderson testified in part and in substance as follows: Resided at Mullan in April, 1899. On the morning of April 29 witness went up to go to work, but was told that there was no work that day. Nothing was said in regard to why he would not be at work. It was said that there would be a meeting up in the union hall. Witness went home, changed his clothes, and went up to the union hall. This meeting was held about 8 o'clock in the morning. Charles Olson was president of the meeting. Witness heard the subject of masking talked about. The boys would not mask. They were told to mask, but they would not do it; that was all. Heard them say that they were going down to Wardner. Nothing was said as to what they were going to do at Wardner. Witness had been imprisoned in the bull pen.

Fred Funk testified in part and in substance as follows: Had resided in Mullan for nearly two years; was engaged as a miner in the Morning mine as shift boss and a member of the Mullan Miners' Union. The Mullan union was under the Western Federation of Miners. Edward Boyce was at that time president of the federation. Witness was not at work on April 29; he went to work in the morning but on his way up to the mine met some of the men coming down; they were union men and they told him that there would be no work that day as they were going down to hold a meeting in the union hall in Mullan. Witness stayed at the mine until half past 8 and then rode back to town and had a conversation that morning with Charley Olson, president of the Mullan union. He asked witness if he was going along down to Wardner. Witness told him he guessed he was. Olson said that they wanted everybody to go and if he knew or should find anyone who did not go it would be his duty to report the fact to him (Olson). Witness talked to other union men about what they were going down to Wardner for. The sense of his conversation with the men was that they were going down there to give moral support to the striking miners at Wardner.

About two hundred men assembled in front of the union hall that morning who went to Wardner. Those men that witness knew were union men. Mullan was a union camp. Witness went to Kellogg that morning with the men that were at Mullan that morning—that is, the union men. Witness heard Mr. Boyce, president of the Western Federation of Miners, make a political speech about November, 1898, at Mullan. In his speech Mr. Boyce recited a number of incidents which occurred in the troubles in the Cœur d'Alenes in 1892 in such a manner as would cause feelings of bitterness between the union and Bunker Hill Company. On cross-examination witness stated that he was arrested and imprisoned in the bull pen. Saw about one hundred armed or masked men between Wallace and Wardner on the way going down; these men went as far as Wardner.

Miss E. F. Bent testified in part and in substance as follows: In April, 1899, she resided in Mullan, where she was teaching school. She resided diagonally across from the miners' union hall. On the morning of the 29th witness was at her boarding house and noticed an unusual number of men at the miners' union hall; they were along in front of the hall, in front of the Windsor Hotel, and across the street. They remained there not more than a quarter of an hour after she first saw them; they then formed into line and marched out of Mullan toward Wallace. They formed three abreast. As they marched off she heard some one in the crowd among the men shout, "Up the hill to Wardner." This was given as a command by some one near the head of the line. Witness recognized George Craddock and Billy Holman in that line. Saw some of the parties in the crowd have guns; does not think that she saw more than one-half dozen with guns when they went out. Thinks there were more than 100 men, but how many more than 100 she couldn't tell.

Gus Errinberg testified in part and in substance as follows: Resided at Gem and was bookkeeper and general office man for the Helena-Frisco Mining Company. There were three large companies operating in the vicinity of Gem. The Helena-Frisco mine was situated about a quarter of a mile above the town of Gem, in the canyon. The Black Bear mine is located a few hundred yards above the Helena-Frisco. In April Gem was a union camp; that is, the mines all employed men belonging to the miners' union. The Helena-Frisco mine was not running on the 29th of April, 1899, nor was the Black Bear mine. The reason why these mines were not running on that day was, as witness understood it, because the miners were not there to go to work on that morning. On the morning of the 29th witness noticed as something out of the usual order that the mill was not running and the men were walking back and forth past the office, which was something out of the ordinary, and they were dressed the way they would be when off duty—that is, on a Sunday or holiday; as a rule they did not have their digging clothes on. Witness saw the train when it came down that morning from Burke about 10.30; there was something unusual about that train that morning; it was made up of empty box cars, quite a number of them, and there were a great many men on the box cars and also in them; some men were riding on the tender of the engine; that was something unusual. Witness noticed that some of these men were armed; the only arms he could see appeared to be rifles; some of the men were masked.

The train passed the Helena-Frisco mine and went down to Gem, which was nearly a quarter of a mile below. The company had a powder house about one-eighth of a mile above the office and between the Helena-Frisco mine and the town of Black Bear. It was between 12 and 15 feet from the railroad track. On that day there was nearly a carload of giant powder kept there; the powder house was kept closed. After that train ran down to Gem it ran back again to this powder house; what was done there witness did not see. When the train passed by the office there seemed to be a larger crowd on than when it first came down. The Helena-Frisco mill did not run at all that day. After that train left witness saw very few men that day; there were very few in comparison with other days. The train came back at 5.30 and stopped at the platform near the office.

Alfred Anderson testified in part and in substance as follows: Lived at the Helena-Frisco boarding house, about a quarter of a mile from the town of Gem. Ran a drill machine in the Helena-Frisco mine. Worked on the night shift on the 29th of April, and was around the mine and boarding house on the morning of the 29th. Was a member of the Gem miners' union; there was a meeting of the Gem miners' union on that morning; there was a meeting called at Gem. When they came out (of the mine) at 5 o'clock there were two well-dressed men standing there, and they said, "Got to meet at 9 o'clock at the union hall." They said this so that everybody could hear it. Witness did not know who these two men were; never saw them before. After that witness went down to the hall between 9 and 10 o'clock; estimates there were over 100 men in the hall; noticed some of the men in the hall when he got there were masked. They had taken a cloth that was lying on a table there and put it over the face; they took cloths there and put it over the face; these cloths were lying on a table there; they were lying right in a roll there; there was only one big roll there and they could take it out. Witness could not tell how many of those men had masks on when he got there, but there was a few of them, anyway; he saw men come in after he came in and they got masks; witness did not take a mask; no one told anyone to take masks; they took them themselves if they wanted them.

Witness saw men in the hall with guns; not many had taken guns when witness got there; he just came in when they started to take them; the guns were kept in the front hall; could not notice exactly if the guns were in a box or not; he was up there himself and was right at the side there and looked at the guns himself; when he looked at them he saw over twenty guns there; the guns were up on high, they were in there close to the wall; men took these guns. That morning the window shades in the hall were down so that the hall was pretty dark. Witness thinks that the men in the hall were union men, but does not know their names; knows their faces. No one told witness at the hall what they were going to do, but after he had been notified by the two men at the mine that morning that he had got to go to a meeting at the hall he said to a Swede, who was a member of the union, "What are we going to do down to Wardner?" The Swede said, "We was just going to drive out the scabs;" that was all.

Witness stayed in the hall about half an hour and then went out, and when he got outside men in the box car told him to get into the box car, and he did so; he did not know any of them. Witness saw the train as it came down that morning; does not know how many were on the train, but there were lots of men; saw some of them masked in the box car, but did not know where they were from, whether from Burke or elsewhere; they had come down from above Gem. Witness did not see any of them have guns, not in the car there; saw some men get onto the train with guns; they were not in his part of the car. The train then went down to Wallace, and from there to Wardner. On his return home on the train the dead body of John Smyth was placed in the same car in which witness traveled. Saw some men around the depot at Wardner with white ribbons on. Went to Wardner because he thought he was going to have fun to see how the scabs would run away.

Joseph Phifer testified in part and in substance as follows: Resided in Burke; was a laborer doing outside work at the Tiger mine; lived at Burke eight or nine years, and was not a member of the miners' union, but had been. Knew Paul Corcoran, and had known him for a couple of years; had a conversation with him at Burke three or four weeks before the trouble. Witness was behind in his dues in the union and Corcoran wanted him to pay up; witness told him that he did not have the money, but Corcoran would not take this as an excuse, as it had been running for some length of time; witness gave him an order on Culbertson, manager of the mine. On the morning of the 29th of April witness was working up in Burke until about 10 o'clock. Witness saw the men all going down to the depot and thought they were all going away, and so he thought he would go himself. The Tiger and Poorman mine and mill were not running that day. This was supposed to be a union camp.

Witness went down to the depot; there was a train there; he saw a passenger coach full of men, and he went down and jumped into a box car; thinks there were six or seven box or flat cars in the train; thinks there were four or five hundred men started from Burke in these cars. The train next stopped at Gem; the train then backed up above the Frisco mine; heard some of them say that they were loading on powder. On his way to the train at Burke witness heard some of them say that they were going to Wardner; this was about 8 or 9 o'clock that morning while witness was working; was not told why they were going to Wardner; did not make any inquiry on the train as to why they were going to Wardner; saw three or four guns in the car in which he was; the men with the guns were masked; could not see anything that was happening outside of his own car. The train then went on to Wallace, stopped there ten or fifteen minutes, then on to Kellogg. At Kellogg witness saw other men with arms and guns, but does not know the number.

I. S. Collins testified in part and in substance as follows: Resides in Burke, and is a practicing physician and has been ever since April, 1897. Witness left his home for his office about 9 o'clock on the morning of the 29th of April. From there he made a professional call, carrying a medical case with him and going afoot. Coming back, he met a train about 300 yards below the Northern depot; there were about 100 men, more or less, on this train; there were some 6 or 7 cars in it. The men asked him to get on; the men on the train that he was speaking to were masked, as well as he remembered; they were on a flat car; there were about 10 of them; saw some of them with guns. Witness informed them that he could not get on the train; that he had patients to look after. They told him to get on and let the patients look after themselves. He endeavored to explain to them that he had an emergency case. They threatened him then that if he did not get on it would go hard with him or something; he could not just say their words. At the same time they stuck out a gun; they brought it up as though they were going to point it at him. Witness told them that if that was the way it was he would have to get on, and he was told to go back into the coach which was at the back end of the flat car, which he did. Witness asked these men what they wanted with him; they said, never mind, they might need him; these were the same ones who told him to get on. Heard conversation to the effect that they were going to Wardner, but did not know for what.

At Gem the train stopped; quite a number of men got on; quite a number also had guns and were masked. After waiting for about twenty minutes they began backing up. A man who was sitting on the opposite side of witness had on a mask. Witness said, "Where are they going?" The man said, "They are going to the magazine for powder." On first getting in the coach witness had asked where they were going of some, but they silenced him and told him that the least questions asked the better off he would be. After getting down to Wallace quite a number of other passengers got on there; at the upper end of Wallace a great number of men got on; a great many were armed, but witness does not remember whether or not they were masked. After leaving Wallace the train was very heavily loaded; in fact, a great number were on the outside. Two or three stops were made between Wallace and Wardner. In coming down to Kellogg witness spoke to a man who was sitting in a seat with him and he informed him that they were going to Wardner. Witness asked him if he could telephone up home, as his folks would probably be uneasy, and the party addressed stated that in all probability the wires were not working. Witness again asked what their object was in going to Wardner, and he was again told with an oath to keep still or it would be the last of him, or would go hard with him, or something to that effect.

Upon reaching Wardner Junction everybody was told to get out, and he got out with the rest, and they seemed as though they were without a leader and they stayed around for quite a little while. Witness went close to the depot. Pretty soon after getting over there they called out all the men with guns to the front. The men with guns went forward and marched down about 200 yards below the depot; there were between 200 and 300 of them. All that had guns were masked, he thinks. They went up the road until they got onto the flat and then marched down the road toward the mill. In the meantime three men, who were armed and masked, came up to witness and told him that in the event of there being any firing for him to stay around the train and engine, and if there was any firing, as soon as it ceased to come where the firing was. Witness stayed there. There was firing; possibly a thousand shots were fired. As soon as it ceased witness went down the track until he got nearly opposite the concentrator and then went up and got near the office of the Bunker Hill and Sullivan Company, when a man in the crowd called out his name and told him that there was a man hit upon the hill and that he was either wounded or dead and that he go up there.

Witness went up and found a man who was just alive; stooped over him and opened his clothing and noticed there was a wound in his left breast. Witness then got up and addressed a crowd of armed and masked men standing off a few steps, saying that he could do this man no good, that he was beyond his help. The man was then carried down and put into the baggage car; he was then dead. Witness examined the wound and just saw the wound on his left breast, and thinks this wound was the point of exit; heard that his name was Smyth and that he belonged at Burke. Saw part of the explosion and saw some of the shooting up on the flat, but did not go up there after this shooting.

George A. Olmsted testified in part and in substance as follows: Resided at Wallace and was a railroad conductor on the Northern Pacific between Wallace and Burke. The regular time for the train leaving Burke was at 10 o'clock in the morning. On April 29th his train arrived at Burke at 9:30 in the morning. Thinks that the mill at Burke was not running on that day. Noticed a few more men on the streets than were generally noticed. That morning witness had a conversation with some men—but did not know who they were—in regard to cars; they asked him how many cars he had; that there was quite a number of men going down to Wallace and they would want some extra cars. Witness informed them that he was going to pick up two or three empty box cars; that was all he had. This was done; got two empty box cars.

On leaving Burke he had three freight cars and a passenger coach. There were about 150 or 175 got into the train at Burke that morning; he did not notice any of them masked or armed; first noticed masks and arms when he reached Gem, which is about three miles from Burke. There were some got on the train at Mace, not over 10 or 15. The train also stopped at Black Bear just a minute or so; does not know by whose direction. The train made the regular stop at Gem; quite a number got on there, from 150 to 200; the bigger part of them were masked and armed, nearly all of them. At the Frisco mill three ore cars were picked up. The Frisco mill was not running that day; does not believe there was any mill between Burke and Wallace running on that day, not that he noticed.

The train backed up about one half a mile from Gem up to the Frisco powder house. A masked man told him that they wanted him to back up to the Frisco powder house. He came to witness right at the depot in Gem, in front of the post-office, and wanted to know how long they would be there. Witness replied, "Just a few minutes, long enough to get the mail and passengers on;" so he said, "We have got a lot of men over in the mill that want to go down to Wallace; can you wait a few minutes?" Witness told him that he would stop just a few minutes, long enough to get the passengers and mail; and then there was a couple more masked and armed men stepped up and said, "We have got a guard on the engine there and you will have to wait here until we get ready to go," or words to that effect. Witness thereupon waited fifteen or twenty minutes. Then this masked man came around and said he wanted to back up to the Frisco powder house; witness said he could not, he had too many cars to back up a hill; the masked man said, "You can take some and set them out at the siding; we have got to go back up to the powder house to get some powder."

Witness said he would see the engineer and see if he could back them up; the engineer said he guessed he could or would try it or something to that effect. There were 15 or 20 armed and masked men on the engine. Upon getting up to the powder house they loaded a lot of powder into one of the box cars; there must have been 60 or 75 boxes of powder put on; there are 50 pounds to the box. The train then proceeded down to Wallace. After leaving Gem this masked man or leader said they were going to Wardner, and wanted to know if they took his (witness's) train whether he would go with them, and witness said no, that he would not go to Wardner; witness said, "You will have to get a smaller engine, our engine ain't safe to run over the O. R. & N. track and bridges." At Wallace, at the junction, this same masked man and leader came to witness and said that they were going to take his train to Wardner, and the following conversation took place: I told him, "No, I could not go unless they got orders, made arrangements for the train." I told him that it was a foreign road, and there was other trains running between Wallace and Wardner; would have to get a smaller engine and make arrangements for the train to run over the O. R. & N. track. So he says, "We have got to go to Wardner, and," he says "we are going to take this train," and he says, "we will do—make whatever arrangements that you think best to get the train," but he says, "if we can not get it," he says, "we have got to go to Wardner anyhow," so I told him, I says, "I can not go with you," I says, "unless you make arrangements for the train; get orders;" so we got to Wallace and I told him, I says, "We will go in and see the superintendent," I says, "you can see the superintendent and see if you can get orders for the train"—customary, running over a foreign road, to get orders and permission to run over the line; so the superintendent was not in; then I started in to the telegraph office, depot, intended to telegraph to Missoula, report to Missoula, and the operator was standing outside and he said he had no wire.

Q. Where was this masked man during all this time?—A. He was with me, along with me.

Q. Stayed right with you, did he?—A. Yes; he stayed with me.

Q. Go ahead.—A. Then the operator says, "We have no wire, the wire was down." Then I says to the fellow, I says, "We will go up to the O. R. and N.; see what we can do up there." So I went up to the O. R. and N. and told the operator there or agent, says, "There is a gang of masked men got on our train," I says, "and they want orders to go to Wardner." Well, we talked around there a while, fifteen or twenty minutes, and they said they would not give us no orders, could not give us no orders—something to that effect—so this masked man, "We have got to go," he says; "I am in a hurry, "he says; "I have got to get out of here," he says, "Can't you go without orders?" I says, "No, I won't go without orders." "Well," he says, "I am going to take the train," he says, "I have got to go to Wardner." So we left the depot, the O. R. and N., and walked down to the O. R. and N. depot, where we had left the train, and it had gone; they had pulled out for Wardner.

Q. Was there anyone there that had authority to take that train anywhere, outside of yourself?—A. No, sir. There were quite a number got on the train after leaving Wallace and before reaching Wardner, some at the O. R. and N. depot and some at the Junction switch, probably one hundred or two; made no attempt to collect fares from those men getting on at Wallace.

Q. What did you do, then, after finding that the train had gone?

A. Well——

Q. (Interrupting.) Did you do anything? Please go on; put it in narrative shape; go on and state what was done.

A. Well, we got down to the depot, and the train had gone; so I says, "It may have gone down in the yard to get water."

Q. Said to who?—A. This leader, this masked man; and he looked down the yard, and there was another engine standing on the track, one of our engines, and he says, "Whose engine is that?" I says, "That is an engine that belongs to the ore train, extra engine that is working here." "Well," he says, "we will take that," so he started down to the engine, and I went and looked in the depot to see if Mr. Boyd, the superintendent, was in there, and he was not there, and then I walked down to where this engine was standing, about three or four blocks below the depot, and I got down there and there was, O, I guess 8 or 10 masked men there; so I got down there, and the leader, this—some of the men asked where the engineer and fireman was that belonged to the engine, said they were going to take it to Wardner. So I told them, I says, "I guess they are probably at dinner, about the noon hour." Well, he says, "We are going to take this engine," he says, "if you can get them you had better get them, and have them go." So I says, "If you will just wait a few minutes," I says, "I will see if I can find them," and about that time the fireman that belonged to that engine—I forget his name—came along and I asked him where the engineer was.

Mr. Robertson. We object to this conversation on the ground it is out of the presence of the defendant.

The Court. Yes; I think that conversation is improper.

Q. Those masked men there?—A. Yes, sir.

Q. This leader and the others?—A. Yes; about 8 or 10 besides the leader.

Mr. Hawley. We submit your honor, it is proper.

The Court. He may now answer. (Exception.)

Q. Proceed with your narrative, Mr. Olmsted.

A. Well, they says—I asked the fireman if he knew where the engineer lived, and he said "Yes he did," so I told him, I says, "These fellows are going to take your engine to Wardner;" I says, "Don't you think Cochran will want to go with it?" "Yes;" he says.

Q. Cochran was the engineer?—A. The engineer that belonged on that engine. He says, "I guess he would," he says. Well, I says, "We will go over and see him," I says, "and see what he wants to do;" so we went over to Cochran's house, and I told Cochran that there was a gang of masked men had his engine, going to take it to Wardner; asked him if he wanted to go with it. He says, "Yes;" he says, "I will go," or something to that effect. So, he walked over to the engine, and Cochran took his engine, and these masked men got on, and we went to Wardner.

Q. Well, did you go up to Wardner?—A. Yes, sir.

Q. Who went with you besides the engineer and the fireman?—A. Oh there were 12 or 15 men; they were masked, had guns; I do not know who they were.

Q. This leader one of them?—A. Yes; he was on.

Witness came back on his own train that night after having stayed at Wardner about three hours. Thinks there were 700 or 800 came back, all that could get on; thinks that they were the same men that went down. Did not attempt to collect fares from them coming up. They had charge of that train; as a matter of fact it was their train; they had charge of it.

L. W. Hutton testified in part and in substance as follows: Resides at Wallace and is a locomotive engineer on the Northern Pacific between Wallace and Burke. Witness was engineer on the train on which Mr. Olmsted was conductor on the 29th of April, which left Burke at 10 o'clock in the morning. At Burke witness noticed more than the usual number of men about town. The mills were not running. Saw more than the usual number of men at Gem. Had a talk with Charles White who worked in the Tiger-Poorman mine, and White told witness that they were going to Wardner. Saw two or three different men with guns at Burke that morning; thinks that there were about 250 men got onto the train at Burke. While waiting at Burke two men with masks on stepped into the cab and said, "We want you to go right away; we have no time to wait." These men were masked and had guns. Witness without anything further realized that something was up and started to pull out without attempting to put them off or wait for the conductor. After pulling down a little way one man stepped in the cab on witness's side and said, "Did you get any orders to stop at the powder house?" "No." "You are likely to get one." This man was masked and had a Winchester and he stepped outside of the cab; stepped on the tank; there must have been some 8 or 10 on the tank and in the gangway between the engine and the tank. Before running a hundred yards another man stepped in there with a gun in his hands—he did not point it at me—and said, "We want you to stop at the Black Bear powder house." He was masked. Between 20 and 40 men got on at the Standard mine where the train stopped. Witness proceeded to testify as follows:

Q. Go ahead with your narrative?—A. We went on; got down within about 200 yards of the Black Bear powder house; Black Bear is strung out some four or five hundred yards. I was down amongst—in the town, whatever you might call it—and running right along as usual; a man knocked at the front cab window, behind me, this—I am back of you remember; he knocked at the front cab window, and I just turned a little button, where we open this window and let anybody come in from the front, and the first thing I knew, opened the window, looked right back and here was a man with a mask on, a black mask, and a heavy revolver, had it cocked, and he said, "We want you to stop at the Black Bear powder house." I said, "Certainly; put that gun down, I can not handle an engine with a gun pointing at me," and a fellow said, "Put that gun down;" that knocked me clear off my feet. I stopped at the powder house; we stayed there quite a while. The powder house was on the opposite side, and, of course, I could not see the powder house; did not want to see it, for I was right on my side, and I stayed strictly in my cab, my point of duty. We stayed there until five minutes—pulled out down to Gem.

Witness corroborates the testimony of Conductor Olmsted with reference to the orders given at Gem to back up to the Frisco powder house. He estimates that there were 200 or more got on the train at

Gem. Picked up three empty box cars at Gem, then proceeded to Wallace. Witness further corroborates the testimony of Conductor Olmsted as to what took place at Wallace in passing from the Northern Pacific to the O. R. and N. tracks, and further testified that one of the men stated that they could get no orders to go down there, and that witness had to go anyhow, and further ordered witness to blow the whistle and tell the fireman to ring the bell, and pointed a Winchester at witness and said, "You have got to go." Witness thereupon took the train over the switch, over the O. R. and N. tracks, and on to Wardner. Upon reaching the head of the flume at Wardner Junction there was a lot of men out flagging, and he stopped the train; most of them were masked and some of them were armed. Between the head of the flume and the Wardner depot the train stopped about five times, being ordered by these fellows, and men got on the train. All of these men were masked about the time they got onto the train; saw lots of them masked even before getting within 200 feet of them; saw some of them put masks on; saw some of them with their coats turned inside out. Stopped at these different places because these men along the road said, "Stop." After the train arrived at Wardner heard the order given, "Burke, fall in line." They were armed and masked, witness thinks, to a man; thinks there were about 250 of them that fell in line. They marched toward the O. R. and N. depot, and then marched toward the mill. Witness heard firing; thinks there were from 500 to 1,000 shots fired.

Wallace Haight testified in part and in substance as follows: That he was 9 years old and resided in Wardner. On the day the Bunker Hill mill was blown up Harry Mooman and witness were down on the Wallace road after a load of wood, with a wagon and team. They saw a whole lot of men coming down there in the road that morning and the men stopped away down there on the big flat place; they all stopped there; they had some bundles in their hands or arms; under their coats; there were old clothes in these bundles. After they had the wood loaded up these men all stopped; while going up the road witness met other men; these men unwrapped those bundles. At the place where the roads fork there was a man standing and he would tell them (the men) which way to go. He would say, "This way is the road to go on." Some men he missed and two men went away over there on the sand and he hollered at them and told them this was the way; saw this man before; they called him Joe. Witness was up home at the time of the explosion.

Katie McLoughlin testified in part and in substance as follows: Resided in Wardner for about four years. Was at home on the morning of April 29. Witness's house is situated to the left of the road as one goes down to Kellogg. Witness saw quite a number of men going in the direction of Kellogg on that morning; they were carrying paper bundles; they had them under their arms; saw six or seven carrying paper bundles that morning; saw one carrying a gun; he had it rolled up in his overalls; had it in his hand; this was Mr. Oberg. Witness names six men whom she saw carrying these bundles; saw these men about 10 o'clock; saw these same men coming back after the mill was blowed up. Mr. Anderson (one of the men witness identifies) when he returned had a mask on, the way his face looked; he was all dirty.

I. L. Magee testified that he was a physician and surgeon practicing at Mullen; that he had examined the body of John Smith, who had been shot at Wardner on April 29. As a result of his examination he testified that the bullet that killed Mr. Smith entered the back and came out in front, the point of entrance being higher than the point of exit, making an angle of from 12 to 20 degrees, so that the ball must have been shot from above.

Jennie Parker testified in part and in substance as follows: Resided in Wardner for about three years, and on the 29th of April was at her home in Wardner; home is right on the public road leading from Wardner to Kellogg. Noticed quite a number of men going down the road on the morning of the 29th, between 10 and 11 o'clock; noticed some of these parties carrying packages and some carrying guns. The packages were small, wrapped in newspapers, and they were carrying them under their arms; witness could not approximate the number; it seemed to witness that nearly every one of them had bundles; knows that there were guns carried, but could not tell how many. Witness identified three of the parties going down that morning carrying guns. Saw these parties coming back after the explosion; one of them carried a bundle; saw just two returning that she was acquainted with.

Mrs. Josephine McDonald testified in part and in substance as follows: Resided at Wardner for two years. Was at home on the 29th of April, on the day of the explosion; home was about 160 feet from the road; noticed a number of men going down the road that morning; could not approximate the number; they had bundles; did not know any of the parties going down; saw quite a number of them have bundles, but could not tell how many; these bundles were done up in newspapers; they were carrying them under their arms; saw these parties in the afternoon; spoke to one of them; his name was Andy Anderson. Witness spoke to him and told him that it was too bad that they had blown up the mill and he made no reply. She asked him if they would do any more and he said they did not think so; they had the mill and that was all they wanted; they could work a couple of years now anyhow, and witness asked him if there would be any danger of them hurting any men that was working at the Bunker Hill, and he wanted to know where McDonald (witness's husband) was and she told him that she did not know. He said: "Tell him to keep out of the way for a few days." Witness's husband was a miner employed in the Bunker Hill and Sullivan.

Steve Bellieu testified in part and in substance as follows: Resided at Wardner; regular business has been that of a waiter; was a member of the Wardner miners' union; went down to Kellogg on the 29th of April (it must have been some time between 10 and 11 o'clock); was not certain whether he went down alone or in company with one Frank Hart; did not carry a bundle; was not doing anything that day and thought he would take a walk down there; had no object at all; was told to go down there, does not know by whom; was told the night before; can not tell exactly where he was when this notice was given him, but was in Wardner some place; was simply told to go down to the Junction; no particular time set when he should go; stayed at the Junction about an hour or so; did not go up the railroad track toward Wallace; does not recollect whether he testified or not before the coroner's jury that he went down to Wardner about 10 o'clock in company with Frank Hart and others, and that he had a package of clothes with him, consisting of jumper and other clothing which he left at the junction; witness was at the bull pen at the time of the Corcoran trial; was not compelled to testify at the coroner's jury.

Chris. Eri testified in part and in substance as follows: Resided at Wardner for about three years; was a miner and has worked in the Bunker Hill and Last Chance mines; was a member of the Wardner miners' union; was president of this union, and resigned last March. Ed. Boyle succeeded him as president. Was in Wardner on the morning of the 29th of April; went down to the Junction about 10 or 11 o'clock that morning; did not take a gun with him; had a bundle with him; it had working clothes in it. There was no work going on in any of the mines at Wardner that day nor in the Last Chance mine. Does not know who the party was that requested him to go down; was notified by someone to go down at night, while coming off shift, between 11 and 12 o'clock; do not know the man that gave the notice nor whether he lived at Wardner. He told witness to come down to the railroad track next day about 11 o'clock and take his digging clothes along, for there might be work for them to do or for him to do; did not tell witness about notifying others; he told witness to tell the rest of the men not to go to work at the Last Chance mine on the 29th, and to tell all the men that came off shift. Witness told some of them, but does not know whether he told all of them or not; thinks that he notified 15 or 20 in all. This man was masked and he had a gun.

Next day witness went down to the railroad track and kept on going on up the track toward Wallace; went up about a mile; no one else was with him; met no one up there. Saw a train that day coming down slowly. They (the men in the train) hollered for him to jump in the car, and as he came pretty close to the car a couple of fellows grabbed him and pulled him in. These men were all masked that he saw there; witness did not have a mask. Went to Wardner Junction on that train; it did not stop and pick up other men before it reached the Junction while he saw it. When witness got his order the night before from the masked and armed man to go down to the railroad track he was told to keep the road straight on until he got to the railroad track. Did not inform the other men to go down there nor to take bundles. Witness put on the clothing that he took down with him that day. Witness was a prisoner in the bull pen at the time of the trial.

Chris Lenecke testified in part and in substance as follows: Resided in Wardner for the last 10 or 11 years; was a miner and last worked in the Bunker Hill and Sullivan; in early days worked in the Last Chance. Was in Wardner on the 29th of April and went to Kellogg that day about noon; went alone; had a bundle containing a pair of overalls; nothing else. His object in going down to Kellogg was to meet the train; the regular train always came in from Spokane; did not expect a train down from the canyon that day; saw the train when it came in. Saw lots of people there and lots of them with arms; saw some of them with white ribbons or white cloths on; did not have any on himself.

Nicholas Hardy testified in part and in substance as follows: Resided at Wardner for about 10 years; was a grocer. Knew a man by the name of Inchman; he was a machine man in the Last Chance mine. Witness had the following conversation with him in April, after the 20th:

Q. Relate your conversation.—A. Well, said to—he said, I guess we will win it—out.

Q. (Interrupting.) What was he speaking of?—A. The strike.

Q. Yes, go ahead.—A. And that he said, he would not say anything about it, let it lay for a few days, get some help there and do the thing up as they could, but they did not want the Bunker Hill to know they was going to do anything, because they would cut off their air.

Q. What do you mean by cutting off their air?—A. Air that run the machines.

Q. Do you know whether or not the machines were supplied with air in that mine by air from the Bunker Hill?—A. Yes, I do.

Q. When he made this talk about help, what did he mean or what did he refer to, if you know?

Mr. Reddy. Object to this, the conversation should be given, and the jury are the judges.

The Court. Yes, let him give the conversation.

A. Well, he said get the help up the canyon.

Q. What else did he say, if anything?—A. Well, said that they were going to work for a few days, then they would get help from up above; there would be so many detailed to help the matter out, he would go on to work, and then he went away and I never saw him any more.

Q. Did he say how many detailed?—A. Oh, about 25.

Q. From Canyon?—A. Yes, and neighborhood.

Inchman was a miners' union man. On cross-examination witness testified to this same conversation as follows:

Q. And it (Inchman's story) began how?—A. Well, began by, let's see, he began by saying that, "well, got up kind of early," he says, "and went down town; ain't working to-day, and things ain't turning out just right, but they will come out all right, and he started on to tell me about this other.

Q. Again go right on, if you please, with the conversation to the end.—A. Said that "there was a strike." He said they had not quite completed it, but they would; had not completed it, but was not going as he wanted it to go, but he said they would win it out, and there would be about twenty-five others to help him, he says, from up the Canyon, and others from other places around help him do this.

Q. Do what?—A. Help him win the strike; help him throw this thing down. I do not know exactly what he did want, but the way he told me——

Q. (Interrupting.) Relate the conversation just as he said, not what he wanted. Go through the entire conversation now.—A. Well, he said, we will win this thing yet——

Q. (Interrupting.) Is that the way he began?—A. Yes; and he says, "We have not said a word about it;" he said, "we are all going back to work this morning," he says; "but," he says, "there will be some of the boys that will not go back," he says; "I am going back," he says, "I think it will turn out all right yet; there is about 25 detailed for that; are going to look around and see into the matter. The air—don't say anything to the Bunker Hill about it—the air will be cut off from the machines."

Q. That all?—A. That is all I can think of now; yes, sir.

Q. You remember it very distinctly, do you?—A. Yes, sir.

Q. And you have given us word for word now?—A. Yes; as near as I can.

Charles Jameson testified in part and in substance as follows: Resided in Wardner in April, 1899. Was a laborer working in the Last Chance; was a member of the Wardner Miners' Union; was in Wardner on the 29th of April; went down to Kellogg that evening, but not before; was across the street from Page's Hotel at the time the Bunker Hill and Sullivan mine was blown up; knew Walt Boomer; believed Boomer was a member of the Wardner Miners' Union; met him at the meetings; had a conversation with Mr. Boomer the morning of the 29th; were talking about not going to work that morning; he told witness that they were expecting a train down, or something to that effect; could not answer from where; said there was nobody going to work that morning.

Sophia Moffit testified in part and in substance as follows: Resided at Kellogg for two years or a little over; two, or probably three, blocks from the railroad track. Was at home the morning of the 29th. Went up on the hillside after the arrival of the train and saw a large number of men. There was a number of men came up around Bussey's store and they crossed Portland street, the road leading to the mill; should judge there was about 75 or 100 men in that body, mostly all masked and armed; they proceeded as far as the powder house. On the left hand side as one goes down to the mill there they halted and fired about three volleys of shot into the flume. It appeared as though they were firing them into the flume, into the side of the hill, and after they fired those shots there was one shot fired, and then there was a good many men run up on the hillside, and they came down carrying something they had with them, laid it down by the fence, and then proceeded to the office and to the mill. When they came back they carried this article.

Witness was very much alarmed at the time, seeing that there were a good many men out through the woods there. One of the men had been shot. When they came back witness went down to the roadside and asked them what had happened down there; whether there was anyone sick in the office, or whether there was a man hurt. There was a gentleman whom witness knew among the crowd, who shook hands with her, and he said, "Mrs. Moffitt, there was a traitor, and we shot him." Witness said, "What was his name?" He said, "Smith." Then some of the masked men ordered him to forward, march. Witness was ordered back at that time, she believes. Witness knew the party that shook hands with her; knew him in Butte, Mont.; his right name was Harry Alford, but she knew another name he went by; it was Charley Lee; this was an assumed name; he was not masked at this time; he had a mask shoved back over his head; believes it was a white mask or a white rag of some kind; he was not masked when he spoke to witness. The crowd then scattered all over the flat where the military is now; did not see much more of them. There were a good many shots fired around; heard them whistling all around. Identifies Fred Shaw as another one of the masked men in that crowd. On cross-examination witness testified that her husband is a blacksmith for the Kellogg Tunnel Company, the Bunker Hill Company; that she could see from the hill back of her house to the place where this party was shot; did not see whether he was shot above or below; heard a single shot fired and saw the smoke from below, and then she saw something drop—a dark figure; did not know just what it was at the time.

George A. Smith testified in part and in substance as follows: Resided at Pine Creek, about 8 miles west of Wardner. On the 29th of April was residing at the Bunker Hill boarding house; his sister was running it. About 11 o'clock that morning was told that the Burke Irish were coming; had not heard anything about this train coming previous to this. Went out and after he got opposite Hyde's store saw 25 or 30 fellows going down the road perhaps two or three hundred yards from him with bundles under their arms; they turned a quarter of a mile above the depot and went out on the railroad grade, and went up and met this train. Witness went down; the train came on slow and he stayed at one side waiting for it to pass by; as it went past one of the fellows on the train, with a black mask on, hollered, "Jump on here." Witness did so and came on to the depot. Noticed that everybody had a white ribbon on their arm or in their buttonhole. Went up to his sister's boarding house and removed her and her children to a house at Kellogg. Saw another body of these men, numbering probably 200 or 250, carrying guns; this body turned and faced the hill and fired something like four or five hundred shots.

Witness then returned to the boarding house and found that everything had been eaten up; there were masked and armed men in there; they kicked in a door and witness asked them not to destroy that property, that it was his sister's private property; one fellow said he knew better, it was the company's property. Witness said, "I know a damn sight better; I know it is my sister's property and I don't want it destroyed." Some fellow stepped in between them who had a black mask on. He said, "That will never do; you fellows leave up, get out of here; you know you have no orders like this;" and forced them all out. They had no sooner quit than another gang came in, and at this time the house was set afire. Witness saw a man pouring coal oil over some clothes that belonged to his sister's children; the house was destroyed; it must have been set afire. Witness recognized the man who poured the coal oil; think they called him Joe Villa; understood since that he lived at Wardner.

Hattie Simmons testified in part and in substance as follows: Resided in Kellogg three years. Was at her home, which is about three blocks west of the depot, on the morning of the 29th of April; home is about 50 feet from the track. Was at home about noon of that day. Saw the train come down with a good many men on; there were most of them masked, the majority; could not describe any of them particularly; they formed in line in front of her house and heard the commands given for Wardner to come ahead and then Burke. A man in the crowd gave these commands; she could not tell who it was; they then started down the track, and after they got down a ways one of the men told them to go back and get the powder, and they turned and went back and got the powder; started down again the second time. They proceeded west after they formed, Wardner men to the front; this was toward the mill. Next witness saw 150 of these men go down the main road toward the mill with rifles, and they fired them off before the men with the powder started down. Witness counted 65 boxes of powder, but there were more than that; the men that carried the powder were masked. Witness talked to one of those masked men on that day; he came to the door (of witness' house) and ordered them not to come out of the house; "he just told us not to come out with a kodak that we had;" that was about all.

Herman Cook testified that he was a rancher residing near Kellogg, and that he was at Wardner Junction on April 29. Saw a line of armed and masked men form. Heard a man who came up from the train—up from the mill way—say, "All hands down the road, here," or, "Wardner to the front." The men then went down the road—down toward the mill. Saw shooting there after that. It was at the mill and at the top of the hill above the mill. Saw about fifteen or twenty men going up the hill. The main body of the men were at the mill. The first shooting came from the mill. There were too many shots went off at once to tell how many were fired. There was shooting from the hill to the mill and from the mill to the hill. The men that started the shooting were close to the mill, and those that shot from the hill might be a quarter or such a matter. Those that went up the hill were all masked. Saw a dead body there brought down. It was Smithy, from Burke. Witness ascertained this by hearing Sheriff Young ask an armed and masked man there who it was, and the man told him Smithy, from Burke.

The testimony of Willard H. Pipes and R. R. Rogers as to what transpired at Kellogg on the 29th day of April; as to their being arrested by armed and masked men; as to seeing Cheyne arrested, and as to the circumstances under which Cheyne, Rogers, and Huff were fired upon and Cheyne killed, and as to the demonstrations of the armed and masked mob when the explosions occurred, shouting, "Down with America," etc., was given at the hearings before the committee and is therefore not repeated here.

William H. Huff testified in part and in substance as follows: Resided at Kellogg; was an assayer for the Bunker Hill and Sullivan, and was such in April. On the 29th of April he was at Kellogg around the works; knew James Cheyne. Witness was captured by a crowd of armed and masked men about 1 o'clock on that day while on the road between the Bunker Hill mill and Kellogg. Mr. Rogers was with him, and Mr. Cheyne was afterwards captured by the same crowd, and they were all taken up the hill just above Kellogg.

One man clubbed his gun at witness as if he would strike him; another took off witness' hat and struck him over the head with it, and ordered him to run; witness commenced to run and they commenced to shoot at him. This order to run was given to Cheyne and Rogers as well as to witness. All three ran. Cheyne was about 10 feet behind witness, and Rogers 6 or 8 feet to one side of witness and a little in advance. Could not estimate the number of shots fired; there were six bullets that struck close to witness that he counted; was not hit; ran around the corner of a barber shop and plunged into a river and swam down the river apiece. As witness ran around the corner of barber shop three bullets struck right by him, two in front and one to his side. As to the kind of masks worn by these men who captured him, witness testified that there was one masked with a part of the American flag containing the stars and some of the stripes; another wore a black silk handkerchief over his face, and then there were a number of white handkerchiefs used. Just before they started to run one of them (of the mob) says, "You no doubt think you will make damn fine witnesses, you fellows;" then when the man clubbed witness over the head he said, "Run down the hill, you s—— of a b——," and called him "scabs."

F. R. Culbertson testified in part and in substance as follows: Resided at Burke and was manager of the Tiger-Poorman mine and was such on the 29th of April. Had known the defendant, Mr. Corcoran, for three or four years at Burke; has always understood him to be a member of the miners' union and was secretary of it. The Tiger-Poorman is a union mine. On the 29th of April witness was at Burke and saw Corcoran; saw him in front of the Miners' Union Hall about 6 o'clock that morning. Witness had made arrangements to go East that morning and had gotten up earlier than usual in order to get to Wallace in time to catch the Missoula train. After getting out on the street he saw a large number of men, quite a number of them his men, and he made some inquiries as to what the trouble was; he saw that they were not at work; made inquiries of probably a dozen or so men to find out what the trouble was and could not find anybody who could tell him anything about it.

He was told by several of his men that there was a meeting going on in the miners' hall, and that nothing could be told or determined what was to be done until after that meeting. As he could not wait until that meeting was over, he sent in word for Corcoran to come out. Corcoran came out of the hall. Witness stated to him that he was going East that morning; that he had only a few minutes to catch the train; that he had noticed that there were none of the men at work; and if there was going to be any trouble there he would have to change his arrangements and remain at Burke. Corcoran stated to witness that there was going to be no trouble at Burke, and that if his arrangements were made to go East he might as well go. Witness then asked him if this was a sympathetic strike in connection with the Bunker Hill and Sullivan; if it was, he could not go away right on the eve of a strike. Corcoran stated that it was not; that they were going to Wardner that day; that the men would all be back that night and go to work on the night shift; that if witness was going East he could do no good by remaining and might as well go, and on that assurance witness left immediately and Corcoran stepped back in the hall. Witness could see into the hall, and saw that there was a large number of people in it. Corcoran's exact language to witness was, "We are going to Wardner to try and persuade the men there not to go to work."

A. M. St. Claire testified in part and in substance as follows: On April 29 was residing at Burke; drove an express wagon; knew of a meeting of the Burke Miners' Union between 7 and 9 o'clock; Mr. Corcoran, defendant, called that meeting; knew this because he heard Corcoran tell parties in front of the union hall that there was going to be a meeting; told that party to go and tell everybody that he was to come; did not know the object of that meeting from anyone who participated in it; knew Mike Malvey; he was a miner, working in the Tiger-Poorman in April, 1899; he told witness that he was a member of the Burke Miners' Union; he conversed with him in regard to what was to be done on the 29th; this was about 9 o'clock, just a short time before the train pulled out; Malvey was going down toward the depot; witness asked him what the trouble was, what they were going to do, and so on; Malvey said they were going down to Kellogg to blow up the mill and run all the scabs out of the country; saw Corcoran that morning, and saw him after the time he saw him notifying the members, and probably half or three-quarters of an hour before the train left; he was standing in front of the union hall, talking to some of the parties there; saw Corcoran at the time the train started that carried the crowd; when the train pulled out he was sitting on a box car right over the door, with his legs hanging down over the door; saw Corcoran on the train when it returned that evening, and saw him get off of the car. On cross-examination witness testified that he did not see Corcoran armed or masked when the train left Burke.

Benjamin Stringham, who had resided at Burke for about twelve years, testified that he saw Mr. Corcoran between 9 and 10 o'clock on the morning of April 29, an hour anyhow before the train left that morning. Corcoran passed along by witness, and witness saw him have something that looked like a gun—it was a long gun; he was on his way to the Miners' Union hall; no one was with him.

G. M. Colburn and his wife, Mrs. Lou Colburn, testified that they resided in Burke, and rented the house they lived in of Mr. Corcoran; that on the evening of the 29th, when the train returned to Burke, they saw Mr. Corcoran sitting on the top of a box car. Their house was about 200 yards below the depot and about 30 or 35 yards from the track. Corcoran had a gun, looked like a rifle; he was holding it across his lap.

Ida J. Sinclair testified that she resided at Kellogg; on the 29th of April saw the train arrive; saw armed and masked men get off the train; saw them marching and heard the order given, Wardner to the front and then Burke afterwards, and then saw them marching toward the mill; witness had been acquainted with James Cheyne for about seven years; on the 29th of April first saw him going toward the Bunker Hill and Sullivan mill on the flume after the train had arrived; next saw him with Messrs. Rogers, Huff, and Pipes, in the company of masked and armed men; witness after leaving her house crossed over a road to the opposite side from where the men having Cheyne and the others in charge were standing; stood there watching them and watching the blasts go off, and as the last blast went off they all shouted and cheered, and then there seemed to be a lull and some parleying between them.

Witness, continuing, testified as follows: "I saw them take off Mr. Huff's hat and strike him over the head with it, and told him to shout, and they swore at him, and then I heard them say, 'Run,' and then I heard some of them say, 'No, stop;' and then again they gave different orders to them, and then all at once they ran; I saw them running; watched the three men run, and Mr. Cheyne—or Mr. Huff and Mr. Rogers ran together down the hill; got over the fence close together, or through the fence, and as Rogers was coming through the fence he seemed—just as he got through the fence he seemed to stagger and he fell; he was struck then, and at that time, as he was going through the fence, Mr. Cheyne came down the hill, and he came down almost straight across, and he took long strides; he did not run very fast; and just at that time Rogers was coming through the fence, and I lost track of Mr. Cheyne. I thought I saw him fall, but I was not sure of it until I went to the bank, and I heard somebody say that they had gotten one of the scabs, and that to fill him full of lead, and such things as that; and I stepped to the bank, and Mr. Cheyne was lying in the road appealing for help; he was saying, 'Don't, for God's sake, shoot me any more; this is not a square deal; somebody will have to pay for this;' and as I started down the bank a masked man tried to detain me, to push me to one side, and told me not to go down and make a fool of myself; and I went down, however, and I told him; I said, 'Mr. Cheyne you must get out of this, they will kill you if you do not.' I said, 'Let me help you, if nobody else will,' and he says: 'Well, you are not strong enough, Mrs. Sinclair; you can not;' and I said, 'You must try and get out of here.' And he tried to get up, but could not; he fell down again.

"So I turned around to the men who were firing and I said: 'If there is a man amongst you who has a particle of humanity in you come and help me with this wounded man,' and at that time there was a man came down the hill, right almost from the place that Cheyne came from, and he had a gun in his hand, and he came up to me and said that—he came up to me and stood there, and they drove him away, told him to stand aside, and then I appealed again, and they told him to stand aside again; and I think three times that I asked, and at last two men came up and helped me, and I took hold of Mr. Cheyne's hand, and I walked back first all the way down to the end—to the back of McKinnis's Hotel, and then I ran on to see if I could find a place for him to lie down, and I did, and found there was a couch in the saloon—in the back of the saloon—and from there I went on and met these masked men with Mr. Cheyne, and I took him in there, and Mr. Sinclair, my husband, and a Mr. Leon Rogers helped him to the couch, and they laid him down there and I examined his wound and found that he was badly wounded, and I went for a doctor. I went out and found Dr. Machette and had him attend to him."

Witness identified this masked man that came down the hill from the direction from which Mr. Cheyne came as defendant, Paul Corcoran. Witness testified that as she came up to Cheyne when he was lying there the masked men said to one another, "Shoot the G— d— s— of a b— and fill him full of lead to make an example of him." After witness arrived near Mr. Cheyne several shots were fired and they struck around her.

Joseph McDonald testified in part and in substance as follows: Resided at Gem; was a mine operator; on April 29th was manager of the Helena-Frisco mine; was at home that day. Only two men were working in the mine that day—a pump man and one engineer. This was a union mine. The reason the men did not go to work that day was because they said they had to have a meeting that day to go down to Wardner; a man by the name of Fox and one by the name of Sherwin told him this; one was a mill man and the other was employed outside.

Bert Fox at that time was an employee of the Helena-Frisco. He told witness that he was a member of the union. Among other things Fox looked after powder, candles, and general supplies going into the mine. He came up and gave witness the keys to the powder house and said they were going to Wardner, giving as a reason that they were coming up after the powder and he wanted to have his hands clear of it; this was after the train went down from Burke, before it had backed up; the train was then in Gem. Eighty boxes of powder were taken out of the magazine that day; each box weighs 50 pounds. After the train pulled out from the powder house witness went up and found the locks broken and the door open. All the fuse was taken away from the fuse house. Saw the train as it pulled back to Gem from the powder house that morning; it was loaded with men; they were masked, and saw arms.

After leaving the powder house one of the men halloed and shook a fuse at witness, and said: "We helped ourselves." Another fellow, who was masked, held up his gun and patted it on the breech. Two evenings after the trouble down at Wardner, Tom Heeney introduced the defendant, Corcoran, to witness, saying that he (Corcoran) was financial secretary of his own union, and was a member of the central union. Corcoran did not dissent. Witness had business with the members of the central union at that time, and was trying to reach some kind of a settlement between them and the Bunker Hill. Corcoran met witness as one of those members.

W. E. Borah testified that he was associate counsel for the State in this prosecution; that he heard a conversation between Magnus Cheyne, brother of James Cheyne, who was killed, and Judge Forney, counsel for the State in this prosecution. Mr. Magnus Cheyne had testified that he had not gone to Wardner; in the conversation alluded to he explained his reasons for denying that he had gone to Wardner, stating that he had made a false statement, and he had made it under fear that if he had testified to the facts as he knew them he would be killed, or at least driven out of the community, stating that threats had been made in that immediate vicinity that anyone who testified would be injured or driven out of the community, and he also referred to the past history of the camp. Witness further testified in connection with offering protection to Dr. Collins, who had testified in the Corcoran trial, and whose life had been threatened by those masked men, they (counsel for the State) had to promise protection of life to a great many witnesses they had called. Dr. Collins admitted that he had made a statement under oath that he had not been down to Wardner on the 29th of April. Afterwards he testified as already given above, and explained as the reason for the first statement that it was made under fear of his life.

The following petition to the Secretary of War, signed by 1,465 citizens of the Cœur d'Alene mining district, shows the intensity of the belief of the law-abiding people there that a necessity exists for military support at this time (p. 1451):

The SECRETARY OF WAR, *Washington, D. C.*

DEAR SIR: We, the undersigned, citizens of Cœur d'Alene mining district, of Shoshone County, State of Idaho, do hereby most respectfully petition you, as the Secretary of War, to allow the small force of Federal troops to remain in the quarters prepared for and occupied by them at the town of Osburn, in this county, for as long a term as Governor Steunenberg, of our State, may think their presence necessary for the preservation of peace and order; and we, as citizens of this district and of the State of Idaho, desire to take this opportunity to express our approval of all the acts that have been done by the governor and other officials of our State to preserve peace and order and to bring criminals to justice.

Some of the acts of the State authorities in this connection may appear to the people at a distance as drastic and severe, but we, who know the desperate conditions that existed for several years prior to the declaration of martial law last May, know that drastic measures were necessary to stop a band of conspirators, who, shielding themselves behind the name of labor organizations, had created a reign of terror and tyranny seldom equaled in the history of any community, and we beg to state that the effort of the governor and State officials, assisted by the military authorities, have brought peace and good order to our district and have given an impetus to all business interests and a sense of safety to our people, which is highly appreciated and for which we are very grateful.

(A photolithographic copy of all the signatures to said petition has been made a part of the record of the hearing.)

The committee finds that martial law was not declared in defiance of section 9, article 1, of the Constitution, and finds that the President of the United States did not declare martial law in Shoshone County in 1899.

The committee finds that the governor of Idaho declared Shoshone County in a state of insurrection and rebellion May 3, 1899, by authority vested in him by the State constitution to "see that the laws are faithfully executed," and in accordance with the following statute of the State of Idaho, to wit:

> (SEC. 7406.) When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has exerted and has not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer, or of the district attorney, or probate judge of the county, by proclamation, to be published in such papers as he shall direct, declare the county to be in a state of insurrection, and may order into service of the Territory such number and description of volunteer or uniformed companies or other militia of the Territory as he shall deem necessary, to serve for such term and under the command of such officer or officers as he shall direct.

The above quotation from the Idaho constitution endows the governor with supreme executive power and imposes on him the duty to see that the laws are faithfully executed; and said statute directs action.

This is the same obligation which the Constitution of the United States imposes on the President in terms as follows:

"The executive power shall be vested in a President," and "he shall take care that the laws be faithfully executed."

If the President, under his authority from the Constitution, may employ any and all governmental agencies to enforce the laws of the United States, so may also the governor of Idaho employ all necessary means to enable him to see that the State laws are faithfully executed. His obligations to the State of Idaho are the same as the obligations of the President under the national Constitution.

(4 Attorney-General Opinions, 515; Williams *v.* United States, 12 Pet., 524; Wilcox *v.* Jackson, 13 Pet., 498; Ex parte Siebold, 100 U. S., 371; In re Neagle, 135 U. S., 1; Logan *v.* United States, 144 U. S., 144; Berkimer's Martial Law; Winthrop's Martial Law; Davis's Military Law.)

In Luther *v.* Borden (7 Howard, 1) it is held that the government of a State may, when the public safety demands it, proclaim martial law within its own limits.

The court declared in this case:

> And, unquestionably, a State may use its military power to put down an armed insurrection too strong to be controlled by the civil authority. The power is essential to the existence of every government, essential to the preservation of order and free institutions, and is as necessary to the States of the Union as to any other government.
>
> The State itself must determine what degree of force the crisis demands. And if the government of Rhode Island deemed the armed opposition so formidable and so ramified throughout the State as to require the use of its military force and the declaration of martial law, we see no ground upon which this court can question its authority. It was a state of war, and the established government resorted to the rights and usages of war to maintain itself and to overcome the unlawful opposition. And in that state of things the officers engaged in its military service might lawfully arrest anyone who, from the information before them, they had reasonable grounds to believe was engaged in the insurrection, and might order a house to be forcibly entered and searched when there were reasonable grounds for supposing he might be there concealed. Without the power to do this martial law and the military array of the government would be mere parade, and rather encourage attack than repel it.

Under this requirement of the constitution of Idaho the governor was authorized to employ whatever men and means he deemed necessary, under the emergency of martial law, to suppress the insurrection in Shoshone County.

Martial law is the law of supreme necessity. It is the law of self-defense, the law of last resort, the law of force.

In the Milligan case (4 Wall., 2) the Supreme Court held that—

> Martial law can never exist when the courts are open and in the proper and unobstructed exercise of their jurisdiction. * * * It is allowed to govern * * * until the laws can have their free course.

In the case of Johnson *v.* Jones (44 Ill., 143) it was held:

> Where the courts in the midst of loyal communities are in the undisturbed exercise of their ordinary jurisdiction martial law can not, under our system of government, exist.

The courts in Shoshone County are not in the "proper and unobstructed exercise of their jurisdiction;" the civil laws do not "have their free course."

They are in the disturbed exercise of their jurisdiction, and are in the midst of a disloyal community.

The Milligan case was one in which the military authority of the United States undertook to enforce martial law in a "loyal community," and where the local civil courts were open and in the proper, unobstructed, and undisturbed exercise of their jurisdiction. Witnesses could come before the court without hindrance or intimidation. Juries could convict.

In Shoshone County, General Merriam says, the mob is, like the rattlesnake, hidden, but ready at the first opportunity to strike again.

Witnesses would not have dared to testify in the Corcoran case but for the presence of a military force, and they could not now live in that county, safe from the vengeance of the mob, if the strong military arm of the State and of the United States were taken away.

This was demonstrated in the murder of John Kneebone in 1894, and is shown by the governor to be the situation now existing in that county. It is proved by his testimony before the committee and by all the witnesses appearing in answer to the "charges," whose opinions were asked.

It is in evidence:

That a large number of men were called from their beds and required to quit their homes by daylight in 1894; that murders were committed, newspapers and editors of newspapers driven from the county, miners and other laborers beaten, and merchants boycotted and forced out of business for merely denouncing such offenses, robbed, and driven from the community in 1895; that attempts were made to blow up with dynamite property of great value in 1896; that citizens were threatened with death and driven out of the neighborhood in 1897 for refusing to join the criminal organizations terrorizing that community, without anyone being brought to trial for the crimes, for the reasons stated in the report of the grand jury set out in Governor Steunenberg's letter to the Secretary of War; That in May, 1897, the national guard of Shoshone County was disbanded by the orders of an individual, and the arms stolen and appropriated by unauthorized persons in said county, and the county commissioners made to serve the purposes of lawless men, as stated in said letter;

That in December, 1897, a foreman of a mine in the peaceful duties of his position was visited at his house in the middle of the night, by armed and masked men, dragged from his bed and brutally murdered, without any effort being made by the officers of the law to bring the guilty parties to justice, and although the law-abiding citizens and the State of Idaho offered large rewards for the apprehension of the criminals, not a witness dare come forth to testify against them;

That in April, 1899, the president of a so-called miners' union came into Shoshone County, and advised violation of law to carry out the edict of his so-called "union," without any steps being taken by the local authorities to circumvent such purposes, although notice of said illegal designs was publicly posted on the 13th of that month;

That the official newspaper of this so-called miners' union indorsed the lawless acts of April 29, 1899, without restriction.

If all these charges are true, and they seem amply proved, and if it is also true that the sheriff of the county of Shoshone and the commissioners thereof had to be removed from their respective offices, for the reasons set forth in the scathing decree of the court after martial law was declared;

That the conditions prevailed as set forth in the reports made by Captain Leavell to Generals Corbin and Merriam; and that on the date of the governor's letter it could be said:

> Threats are constantly being made against those who are seeking to enforce the law, and a spirit of revenge manifested, which no one on the ground can doubt is simply waiting for the removal of the troops to be put into execution.

Which conditions, as shown by the record, prevail at this time, it can not be said that the courts are in the proper and unobstructed exercise of their "jurisdiction," and that the "laws have their free course."

The courts in Shoshone County are exercising their jurisdiction through the moral support and protection of martial law.

These conclusions are clearly established by the testimony of the governor. He says (pp. 1064, 1065):

> I would state, further, that the district judge of that county told me that sometime in May, 1899, when he had called this special term of court, or was sitting as judge at the special term, he was visited at night by what he called an armed man, who wanted to know how he was going to rule, and he repeated the remark that "it has come to a pretty pass when a judge can not be protected in carrying out his duties in the State of Idaho; when he can be intimidated and visited in his own rooms, when he is alone, by armed men and bullies."
>
> I have talked with men who saw the blowing up of the Bunker Hill and Sullivan mine, who saw it and know about these things. I talked with a conductor on the train who runs from there to Burke—Mr. Olmstead—and I said to him, "You have traveled on this train for nine years; these men were not masked until you got to Gem, but they were armed?" He said that was true. I said, "Did not you know them?" He would not reply. Finally he said, "My life would not be worth a thing to make such a statement, and I will not make it under any circumstances whatever, and at any time you use my name in this connection you are liable to be told it is all false." But, fortunately, this statement concerning Mr. Olmstead was made in the presence of witnesses. I could go on and repeat numerous instances of that kind, gentlemen.
>
> Q. Well, we would like a few more; I think it is perfectly legitimate.—A. Well, business men of the town—when I have talked with the business men of the town of Wallace they have invariably made similar statements to me. When I went there in May I told them that the State of Idaho would endeavor to do its part if we could get any cooperation on the part of the good citizens of that section; that we would protect them. "Yes," they said, "we have the Kneebone incident; that is the protection we have." They referred to a man who served on a jury at Mullan—one man who voted for the conviction of Walter Jones. They said, "That poor man was run out of the country and could not get employment, and he was ostracized, and we had to ostracize him ourselves." "They made us do it," a man

told me; "we could get no trade or anything else." I talked with another of the business men there, and asked him why he did not go out and do right and assert himself. He said, "It would not take long any dark night to put a few sticks of dynamite under my shop here and blow it all to pieces." He says, "It has been done and will be done again; you can not protect us." This is what he said. It has been demonstrated time and time again that a man who wants to do right in Shoshone County takes his life in his hands, and his property is not worth anything. I think in 1897 I went to investigate the disbanding of the militia, and I talked with business men and others. I talked with one business man, I well recollect. I got at him indirectly and got him to recite the condition of affairs there and his opinion as to general conditions. I said to him, "I am here now investigating whether it has been the militia, and I would like to know outright how you feel about it, and have your assistance, and have you say how you feel about it," and he seized me by the arm and said, "If you ever say I talked with you about this in any way I will denounce it as untrue." He said, "I take back everything I say; I want you to understand that I have not said a word to you; I have nothing to say whatsoever."

Q. Any instance of boycotting that came under your observation?—A. No particular instance. The history of the county is one series of boycotts; not so much boycotts, either—people lay down; they quit. It is a pretty well substantiated fact—I have never heard it contradicted—that at the time of the Walter Jones trial for the murder of Dr. Hughes, which was in 1896, the judge was visited at that time by an armed mob, who wanted to know how he was going to rule on a piece of evidence, and they said to him, "It would be pretty well for you to rule right." I don't know about that; he did not tell me that; but I have heard it repeated very often, and have never heard it contradicted.

It is also true that the military forces of the United States may be employed in aid of the State authorities in the suppression of insurrection. (See sections 5297 and 5299, R. S. U. S.)

The President is authorized to maintain the civil rights of the people of the States against conspiracies against the laws of a State. (16 Opin. Atty. Gen., 162; 17 Opin. Atty. Gen., 242.)

In 1 Bishop on Criminal Law, section 52, it is stated that martial law may operate to the total suppression or overthrow of the civil authority, or its touch may be light, scarcely felt, or not felt at all by the mass of the people, while the courts go on in their ordinary course and the business of the community in its accustomed channels.

See also Berkimer's Martial Law; Lieber's pamphlet on the "Use of the army in aid of the civil power" (1898, War Department); also Lieber's Justification of Martial Law (1898, War Department).

In Davis on Military Law it is laid down as an axiom that such military authority as is vested in the President or in the governors of the States may be exercised—

First. In support of the proper civil authorities in the execution of the laws.

Secondly. In the maintenance of order in districts in which, by reason of insurrection or rebellion, the civil authority has been wholly or partially displaced and it is for the time unable to exercise its functions.

In the enforcement of the laws troops are employed as a part of the military power of the United States, and act under the orders of the President as Commander in Chief. (Army Regulations, 490.) The same is true when the Army is not employed merely in aid of the civil power, but is operating, as stated above, "in a district in which martial law has been declared." Martial law is defined as "military authority exercised in accordance with the laws and usages of war" (Instructions for the government of armies of the United States in the field, G. O., 100, A. G. O., 1863), and "martial law at home"—or as a domestic fact—as "military power exercised in time of war, insurrection, or rebellion in parts of the country retaining their allegiance and over persons and things not ordinarily subject to it." (Manual for Courts-Martial, p. 5.) It presupposes a state in which the civil courts are unable to enforce their processes, and is justified by the necessity for society to protect itself by suppressing resistance, so that the civil courts may be enabled to fulfill their proper functions. It is the suspension of all law but the will of the military commanders intrusted with its execution, to be exercised according to their judgment, the exigencies of the moment, and the usages of the service, with no fixed or settled rules of law, no definite practice. (Pomeroy's Constitutional Law, 477.) When martial law prevails, the civil power is superseded by the military power, and the ordinary safeguards to individual rights are for the time being set aside, but it is incumbent on those who administer it to act in accordance with the principles of justice, honor and humanity, and the laws and usages of war.

The following extract from Birkhimer's Military Government and Martial Law defines the rights, duties, and obligations of the military commander who is called upon to suppress an insurrection in a State:

> It now becomes necessary, the troops having entered the State, to determine under whose authority they shall act. This question the President decides. He is proceeding, pursuant to law, to render effective one of the guaranties which the Constitution has given each State from the United States. The law prescribes that this shall be done by military force, but it does not enter into details as to how this force shall be used. This is left to the President. The responsibility is his, and he is given a discretion as to the manner in which he shall use the means supplied to him by law to meet the Federal obligation.
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> A State under these circumstances will seldom be disposed to dictate how the assistance called for is to be used. Having exhausted her own coercive resources, she has turned to the stronger power provided by the Constitution to rescue her from the violence of her own members. The power invoked must direct its own energies. It can not abdicate its functions and transfer its duties to the inferior power. Consequently, whether the President either commands in person, as President Washington for a time did in the Pennsylvania rebellion of 1794, or devolve this duty on a subordinate, he must and will reserve the right to resume the reins of supreme authority should the occasion require it.
>
> It follows that the President might proceed to protect the State against domestic violence, either by acting independently of State authorities or in cooperation with them, or for this occasion the troops might, it is submitted, be placed subordinate to and at the disposal of the chief executive of the State. They may be used either to sustain or supplant the civil authorities, depending upon the President's view of the exigency. But whatever plan be adopted, the President would necessarily have the right to modify or abandon it if the public interests and the object to be attained would thereby better be subserved. When the time for the interposition of Federal authority arises, the President, not the State officers, is charged with the duty of seeing that it is wisely and efficaciously exercised.
>
> Yet there is a limit to the authority which may be exerted to protect a State against domestic violence. This must be done in such a manner as not to defeat the object of that other guarantee in the same clause, and which engages the United States to insure each State a republican form of government. The military power invoked must not erect a permanent government nonrepublican in form. Permanently to secure one republican in form, however, it may be necessary temporarily to erect a complete government of the sword, or such modification of this as the emergency, in the judgment of the officer intrusted with the management of affairs, calls for. That martial law may be a proper measure under these circumstances the Supreme Court of the United States, in Luther *v.* Borden, explicitly declared. The domestic violence may vary in its proportions from a local riot or insurrection to rebellion which strikes at the supremacy of State government itself.
>
> The assistance rendered by the President will correspond to the occasion, from a few hundred to perhaps many thousand troops. The district occupied may vary from one or two points to extensive portions of State territory. The measures of administration and control necessary to adopt in every instance will depend upon its own circumstances. The President or the officer to whom he confides the direction of affairs will decide upon this, and if matial law be a necessary and proper measure he will institute it. His is both the duty and the responsibility.

The duty and authority of the President, when either the execution of Federal laws is obstructed, Federal territory invaded, or the States call for assistance, to enforce martial law, if in his judgment the exigency requires it, seems to be complete. In this regard the Executive is invested with all power necessary to vindicate the laws and preserve unimpaired both the integrity of civil institutions and the national domain.

There is no reason why the governor of a State, who is the commander in chief of its armed forces, should not have the power equally with the President locally to enforce martial law should occasion justify it. If the legislature be in session or can be convened in time to meet the emergency, he might with propriety await its cooperation. On the other hand, the state of facts which are held to justify this law generally are of such a nature as to demand prompt action. Delay may be fatal to the maintenance of good order. Such, in fact, generally will be the case. And even if it be practicable to convene the legislature, there may be sufficient reasons why the governor, in the exercise of a wise discretion, may not deem it necessary. There have, however, been few instances of the exercise of martial law by State authority. That of Rhode Island has already been mentioned. The exercise of martial law in the mining district of Idaho in July, 1892, was an occurrence of recent date.

The use of the United States troops for the suppression of insurrection, where called upon by the governor of a State, is always in aid of the civil authorities, and the precedents of this use are numerous: At Boston, by the governor, in 1775; in Virginia, by the governor, in 1775; at New Orleans, by the governor, Burr conspiracy, 1806.

The United States troops were employed at Boston to enforce the master's right to his slave in 1854.

The United States troops were employed to assist the State authorities of Virginia to apprehend and suppress John Brown and his party, who made the raid on Harpers Ferry in 1859.

The United States troops were likewise employed in Arkansas and New Mexico, in 1878; in Arizona, in 1882; in the Indian Territory, in 1889; in Wyoming and Idaho, in 1892.

The United States troops have also been employed to protect property of the United States and of its citizens, and to suppress riotous disturbances in Pennsylvania, Illinois, Dakota, Montana, and elsewhere.

The most notable use of the United States troops in the suppression of insurrection was that by President Cleveland in the case of the Chicago strikes of 1894, and which was duly advised by the Attorney-General of the United States.

A recent case was the use of troops in the Cœur d'Alene district in 1892. On July 13 the governor declared Shoshone County, the seat of disturbance, to be in a state of insurrection and rebellion. On the 15th the President issued his proclamation commanding all persons engaged therein peaceably to return to their homes. Meanwhile both Federal and State troops had been moved to the scene of action. The commander of the latter represented the governor in the field. He exercised martial-law powers fully, removing the sheriff and appointing another in his stead. The appointee was instructed to take possession of all books and property appertaining to the office and perform the duties thereof strictly according to law, except that he was "not to interfere in any way with the administration of martial law as conducted by the military authorities." Mills in the mining region were shut down and other martial-law measures taken by the State military commander. No use of words could relieve the situation from one of the rule of martial law to the fullest extent. No formal proclamation instituting it was issued, but the status became that from its incidents as here narrated. This was eminently proper. The lawful declaration that the district was in insurrection and rebellion authorized the usual measures of war against the rebels and the adoption of whatever means contributed to the speedy restoration of order. The exercise of martial-law authority was by State, not Federal, authorities. The latter acted simply to uphold the former by their presence. The influence they exerted was moral rather than physical.

In Shoshone County, in July, 1892, an armed mob had taken possession of the mines with the avowed purpose of preventing their being worked by persons obnoxious to the rioters. The latter were well armed and provided with dynamite and other high explosives for their measures of threatened and actual destruction. The disaffected district was a mountainous, isolated region. A reign of terror soon was inaugurated which swept away or rendered powerless the local civil magistracy. Circumstances at once reduced the situation to one wherein the military alone could preserve order and reestablish lawful authority. But the State militia were few in numbers and, without support, utterly inadequate for this purpose. The case was, therefore, that contemplated by the Constitution, and the governor, as the legislature was neither in session nor could be convened, applied to the President for the Federal protection to the State guaranteed by that instrument.

Meantime, and as if to leave no means at his command for sustaining civil authority untried, the governor issued a proclamation declaring the county which was the scene of disturbance to be in a state of insurrection and rebellion. It was preliminary to proceeding by summary processes so soon as the military should be upon the scene of action. It authorized the adoption of martial law or other measures which the exigency of the case rendered necessary. The President promptly responded to the governor's call for regular troops. It is particularly to be noticed that the object for which they were sent, as indicated by the President himself, was, in the terms of the governor's request, to cooperate with the civil authorities in the preservation of the peace and protecting life and property. Fortunately for all concerned, a prudent and able regular commander was near at hand. To him was intrusted the management of military matters, with orders to report to the governor. The appearance of the military upon the scene was the signal for the rioting miners to disperse to their various camps; but here, as has been so often the case elsewhere, it was found that the local authorities, either from sympathy with the rioters or through fear of their vengeance, were incapable properly of performing their functions. They could not be trusted to proceed promptly against the lawbreakers to bring them to justice and restore confidence to the community.

The civil magistracy being powerless either to protect society or to maintain government, martial law, without formal proclamation other than that of the governor's mentioned, now found its fitting field of action. Local civil officers who had been duly elected or appointed under the laws of the State were in some instances removed, and others appointed by the governor's representative on the spot, who was given direction of martial-law measures. United States as well as State marshals were there to make arrests, with the assistance of the troops, without which they could have done nothing. Some hundreds of the malcontents, charged with murder, robbery, plunder, and criminal destruction of property, were thus taken into the custody of the civil authorities, and the military became in part superior to the civil power. There were no antagonisms, no strife for precedence between these agents of the law. All worked together harmoniously for the common end—the restoration of law and order in the community, giving security to property, the bringing of criminals to justice.

The committee found no evidence of any proclamation of the governor suspending the writ of habeas corpus, and certainly no such action was taken by the President.

Shortly after their arrest and imprisonment by the State authorities under martial law, some of the prisoners made application for the writ of habeas corpus in order to secure their discharge. These applications were made to Judge Mayhew, the judge of the district court of Shoshone County, and were by him denied. Subsequent to this action application was made to the supreme court of the State for a writ of habeas corpus on behalf of William Boyle, one of the county commissioners. This court also denied the writ, as appears from the following decision:

In re Boyle, Idaho supreme court.

1. In case of insurrection or rebellion the governor or military officer in command, for the purpose of suppressing the same, may suspend the writ of habeas corpus or disregard such writ, if issued.

2. The truth of recital of alleged facts in proclamation issued by the governor, proclaiming a certain county of the State to be in a state of insurrection and rebellion, will not be inquired into or reviewed on application for writ of habeas corpus.

3. The proclamation of the governor declaring Shoshone County to be in a state of rebellion, and his action in calling to his aid the military forces of the United States, for the purpose of restoring good order and the supremacy of the law, had the effect to put into force, to a limited extent, martial law in said county, and such action is not in violation of the Constitution, but in harmony with it, being necessary for the preservation of the Government and in its necessary self-defense.

(June 16, 1899.) Petition for a writ of habeas corpus to obtain the release of petitioner from custody to which he had been committed in proceedings in accordance with a proclamation by the governor declaring martial law in a certain county in the State, denied.

The facts are stated in the opinion.

HUSTON, Ch. J., delivered the opinion of the court:

This is an application for a writ of habeas corpus. To the petition a general demurrer is filed. The only question presented for our determination is, does the petition state facts entitling the petitioner to the writ? The petition alleges the illegal retention of the petitioner, and sets forth the alleged cause of and authority for such detention; and it is upon the alleged illegality or want of authority therefor that petitioner bases his right to the writ. As to the facts set up in the petitions, so far as not contradictory or conflicting for the purposes of this decision, in so far as they are assumed to be true, do they constitute sufficient ground for the issuance of the writ? It appears from the petition that on the 3d day of May, 1899, the governor of the State of Idaho issued the following proclamation:

STATE OF IDAHO, EXECUTIVE OFFICE.

Whereas it appearing to my satisfaction that the execution of process is frustrated and defied in Shoshone County, State of Idaho, by bodies of men and others, and that combinations of armed men to resist the execution of processes and to commit deeds of violence exist in said county of Shoshone; and whereas the civil authorities of said county of Shoshone do not appear to be able to control such bodies of men or prevent the destruction of property and other acts of violence; and whereas on Saturday, the 29th day of April, 1899, at or near the town of Wardner Junction, in said county of Shoshone, State of Idaho, an armed mob did then and there wantonly destroy property of great value, with attendant loss of life; and whereas said destruction of property, with attendant loss of life, by mob violence, as above set forth, is but one and a repetition of a series of similar outrages covering a period of six years or more just passed, the perpetrators of outrages seeming to enjoy immunity from arrest and punishment, through subserviency of peace officers of said county of Shoshone or through fear on the part of said officers to such bodies of lawless and armed men; and whereas I have reason to believe that similar outrages may occur at any time, and believing the civil authorities of said county of Shoshone are entirely unable to preserve order and protect property:

Now, therefore, I, Frank Steunenberg, governor of the State of Idaho, by virtue of authority in me vested, do hereby proclaim and declare the said county of Shoshone, in the State of Idaho, to be in a state of insurrection and rebellion. In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State.

Done at the city of Boise, the capital of the State of Idaho, this 3d day of May, A. D. 1899, and of the independence of the United States of America the one hundred and twenty-third.

FRANK STEUNENBERG.

By the governor:
M. PATRIE, *Secretary of State.*

That thereafter, upon the call of the governor, a military force was sent into said Shoshone County by the President of the United States, which proceeded at once to secure the arrest of the parties engaged in and who committed the outrages of the 29th of April, for the purpose of bringing such parties before the proper tribunal for trial.

Among the parties who were arrested as being implicated in the murders and other crimes resulting from the insurrection, riot, or rebellion of the 29th of April was the petitioner, and he bases his claim to be discharged from such arrest upon various grounds: "(1) No insurrection, riot, or rebellion now exists in Shoshone County. (2) The governor has no authority to proclaim martial law or suspend the writ of habeas corpus. (3) That martial law does not exist in Shoshone County, and has not been proclaimed in said Shoshone County by anyone having authority to make such proclamation. (4) That the little disturbance of the 29th of April is over; that the parties implicated in it, after having destroyed about a quarter of a million dollars of property and committed several murders, have retired to their homes; and that, in recognition of the inalienable rights of the citizen, they ought not to be disturbed. (5) That the governor had no right or authority to send an agent or representative to Shoshone County to consult and advise with the military officers sent there by the Federal Government to assist in putting down the insurrection and restoring order in said county."

Counsel have argued ably and ingeniously upon the question as to whether the authority to suspend the writ of habeas corpus rests with the legislative or executive power of the government; but from our view of this case, that question cuts no figure. We are of the opinion that whenever, for the purpose of putting down insurrection or rebellion, the exigencies of the case demand it, for the successful accomplishment of this end in view it is entirely competent for the executive or for the military officer in command, if there be such, either to suspend the writ, or disregard it if issued. The statutes of this State make it the duty of the governor, whenever such a state or condition exists as the proclamation of the governor shows does and has existed in Shoshone County for the past six or seven years, to proclaim such locality in a state of insurrection, and to call in the aid of the military of the State, or of the Federal Government, to suppress such insurrection, and reestablish permanently the ascendency of the law.

It would be an absurdity to say that the action of the executive, under such circumstances, may be negatived and set at naught by the judiciary, or that the action of the executive may be interfered with or impeded by the judiciary. If the courts are to be made a sanctuary, a city of refuge, whereunto malefactors may flee for protection from punishment justly due for the commission of crime, they will soon cease to be that palladium of the rights of the citizen so ably described by counsel.

Section 7405 of the Revised Statutes provides: "When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, and is placed under the temporary direction of any civil officer, it must obey the orders in relation thereto of such civil officer."

The facts set forth in the governor's proclamation warranted his action. It is true that some of the facts recited therein are negatived by averment in the petition, which would seem to put in issue the truth or falsity of these recitals. On application for writ of habeas corpus the truth of recitals of alleged facts in a proclamation issued by the governor proclaiming a certain county to be in a state of insurrection and rebellion will not be inquired into or reviewed. The action of the governor in declaring Shoshone County to be in a state of insurrection and rebellion, and his action calling to his aid the military forces of the United States for the purpose of restoring good order and the supremacy of the law, has the effect to put into force, to a limited extent, martial law in said county. Such action is not in violation of the Constitution, but in harmony with it, being necessary for the preservation of government.

In such case the Government may, like an individual acting in self-defense, take those steps necessary to preserve its existence. If hundreds of men can arm themselves and destroy vast properties, and kill and injure citizens, thus defeating the ends of government, and the government be unable to take all needful and necessary steps to restore law and maintain order, the State will then be impotent, if not entirely destroyed, and anarchy placed in its stead. It is no argument to say that the executive was not applied to by any county officer of Shoshone County to proclaim said county to be in a state of insurrection, and for this reason the proclamation was without authority.

The recitals in the proclamation show the existence of one of two conditions, viz: That the county officers of said county, whose duty it was to make said application, were either in league with the insurrectionists, or else, through fear of the latter, said officers refrained from doing their duty Under the circumstances it was the duty of the executive to act without any application from any county officer of Shoshone County. This conclusion is based upon what we deem a correct construction of the provisions of our Constitution and statutes in force, in pari materia.

It having been demonstrated to the satisfaction of the governor, after some six or seven years' experience, that the execution of the laws in Shoshone County through the ordinary and established means and methods was rendered practically impossible, it became his duty to adopt the means prescribed by the statute for establishing in said county the supremacy of the law and insuring the punishment of those by whose unlawful and criminal acts such a condition of things has been brought about; and it is not the province of the courts to hinder, delay, or place obstructions in the path of duty prescribed by law for the executive, but rather to render to him all the aid and assistance in their power in his efforts to bring about the consummation most devoutly prayed for by every good and law-abiding citizen in the State.

The various questions raised by counsel have been considered by the court, and it is our conclusion that the petition does not state facts which show that the writ demanded ought to issue; wherefore the said demurrer has been sustained and the writ denied.

Quarles and Sullivan, J. J., concur.

This decision stands to-day unreversed and must be considered as the law of the land in the State of Idaho and binding on this committee.

It appears that on January 31, 1900, application for a writ of habeas corpus was made by one Charles Tilford. The petition is as follows (p. 1565):

[In the district court of the first judicial district of the State of Idaho, in and for county of Shoshone.

In the matter of the application of Charles Tilford for a writ of habeas corpus.

PETITION.

Hon. ALEXANDER E. MAYHEW,

Judge of the District Court of the First Judicial
District of the State of Idaho, in and for the County of Shoshone:

The petition of Charles Tilford respectfully shows:

That he, the said Charles Tilford, is unlawfully detained, confined, and restrained of his liberty by Hugh France, George E. Edmonston, John Doe Pipkins, Sheriff Angus Sutherland, and Jailer Frank Rose, in the county jail in Wallace, county of Shoshone, in the State of Idaho. That said restraint is for the purpose of unlawfully restraining and detaining your petitioner, wholly without authority of law, and in violation thereof.

That the said imprisonment, detention, confinement, and restraint are illegal, and the illegality thereof consists in this, to wit:

That your petitioner was, on the 23d day of January, A. D. 1900, arrested by one John Doe Pipkins on a pretended complaint of one George E. Edmonston, on a pretended charge of interfering with the rights of the said George E. Edmonston.

Said interference consisted of seeking and procuring employment and earning a livelihood without asking or obtaining the consent of the said Edmonston to so do.

That the said John Doe Pipkins placed the said petitioner in the said Wallace jail.

That the said persons are, by and with force of arms, holding your petitioner in the aforesaid jail without any lawful authority and without charging your petitioner with the commission of any offense against the laws of the State or of the United States.

Wherefore your petitioner prays that a writ of habeas corpus may be granted, directed to Hugh France, George E. Edmonston, John Doe Pipkins, Angus Sutherland, and Frank Rose, commanding them to have the body of Charles Tilford before your honor at a time and place therein to be specified, to do and receive what shall then and there be considered by your honor concerning him, together with the time and cause of his detention, and said writ, and that he may be restored to his liberty.

Dated on the 31st day of January, A. D. 1900.

CHAS. TILFORD.

Subscribed and sworn to before me this 31st day of January, A. D. 1900.

[NOTARIAL SEAL.]

H. M. DAVENPORT,
Notary Public.

(Indorsed as follows:) Copy. In the district court of the first judicial district of the State of Idaho in and for Shoshone County. Petition of Charles Tilford for a writ of habeas corpus. Peter Breen, attorney for petitioner.

This application was also denied. It does not appear that Governor Steunenberg ever attempted to suspend the writ of habeas corpus or thought he had the right so to do. He testifies positively (p. 956) that he did not attempt to suspend the writ of habeas corpus. He simply declared the county of Shoshone to be in a state of insurrection and rebellion and did not attempt to suspend the writ of habeas corpus because he did not believe that he had any authority to do it (p. 1048). J. H. Forney, esq., who represented the State as counsel in these cases, says (p. 671):

> The governor did not suspend the writ of habeas corpus. He had no right under those facts to do so, and he never assumed to do so. The writ never was suspended there.

It was claimed by the attorney-general of the State, in his pleadings filed to resist the issuance of the writ, that the writ of habeas corpus was suspended, but the evidence shows beyond question that neither the governor or any other authority there had any right to suspend the writ and that no attempt whatever was made so to do. The supreme court of the State found that the facts set forth in the application made on behalf of Boyle were insufficient to justify the issuance of the writ and sustained a demurrer to the application.

The third charge is as follows:

> Whereas it is charged that Brig. Gen. H. C. Merriam, commanding the troops in Shoshone County, arbitrarily, and without warrant of law, without informing the accused of the charge upon which they were arrested, and in defiance of the sixth amendment to the Constitution, arrested and imprisoned hundreds of citizens of the United States and of the State of Idaho, and held them prisoners under the most brutal and tyrannical conditions, denying to them their constitutional right to speedy trial by an impartial jury of the State, which right the Constitution clearly guarantees.

In considering this paragraph it appears that General Merriam and his troops are charged as follows:

First, with having arrested and imprisoned hundreds of citizens arbitrarily, without warrant of law and without informing them of the charge on which they were arrested.

Secondly, with having held them prisoners under the most brutal and tyrannical conditions.

Thirdly, with having denied them speedy trial.

After investigating these charges the committee finds—

First, that no arrests were made by General Merriam and his troops, but that all arrests were made by the representatives of the governor of Idaho, under the orders of the governor.

That all persons arrested were imprisoned or detained by the State authorities of Idaho and that the Federal troops were used as a guard for the safe-keeping of the prisoners.

Secondly, that the prisoners were held by the State authorities of Idaho and not by General Merriam and his troops, except in guarding them from escape.

General Merriam was at all times solicitous as to the welfare of the prisoners, giving careful oversight to all matters over which he had control. The brutal and tyrannical conditions charged did not exist.

Thirdly, that it was not within the power of General Merriam or his troops to deny or afford to the prisoners a trial of any kind, that being the province of the State.

General Merriam did urge upon the governor of Idaho that the prisoners be given a speedy "preliminary examination and release of those not prima facie guilty." This is shown by General Merriam's telegram to the governor.

WARDNER, *May 11, 1899.*

Governor STEUNENBERG, *Boise, Idaho:*

I am still holding nearly 500 prisoners in a barn and box cars. All are very uncomfortable, and with unsanitary conditions which will soon become intolerable. Something must be done to hurry preliminary examination and release of those not prima facie guilty. It is impracticable to make this large number of prisoners reasonably comfortable here without considerable time and expense. Can you not personally inspect the situation at once and bring help?

MERRIAM, *Brigadier-General.*

The official correspondence between the War Department and General Merriam and Governor Steunenberg shows clearly that it was intended that the troops were to be used to aid the State authorities of Idaho in suppressing the insurrection, restoring peace and quiet, and maintaining order in Shoshone County, and to act in the capacity of guards over civil prisoners.

That General Merriam clearly understood the purposes for which the troops were to be used is shown by his telegraphic orders to the commanding officers at the different department headquarters at Spokane, Walla Walla, Vancouver, and Boise, of which the following is a model, directing the movement of troops, etc., for his aid:

MAY 1, 1899.

COMMANDING OFFICER, *Walla Walla, Wash.:*

Send one officer with 75 good men to Wardner, Idaho; there to encamp and to maintain order. Fifteen days' rations, 200 rounds per man; no horses required. Move by first train leaving Walla Walla.

MERRIAM, *Brigadier-General.*

Early on May 2, 1899, similar telegrams were sent to "Harrison," "Assinniboine," "Russell," and "Douglas."

General Merriam reached Wardner on May 4 (Record, p. 1801), and before the committee he testified as follows (p. 1801 of Record):

My instructions to Major Morton were what they always were from that time forward: That arrests would only be made by State deputies or sheriffs under protection of the troops, who would also guard and safe-keep the prisoners as they were arrested; that any search or seizure should also be carried out by the deputies under the protection of the troops.

Under date of May 5, 1899, General Merriam telegraphed to the Adjutant-General of the Army as follows:

Three hundred and fifty arrests have been made. Prisoners guarded by troops. State officers investigating. Understand governor of Montana will surrender fugitives escaping over the mountain trails. I will furnish escort to Idaho sheriff to receive them.

On page 1806 of the record General Merriam testified as follows:

Q. Will you state to the committee if you made any arrests of persons either in Idaho or Montana?—A. I did not, either personally or by order, direct the arrest of anybody at any time. I will qualify that answer by explanation to the telegram sent out by me from Spokane, in which I say "Arrest all persons." It is found on page 31 of War Department Report, as follows: "Arrest all persons attempting to leave mining region of Cœur d'Alenes unless fully satisfied that they are not implicated in the riots. Martial law has been declared in Shoshone County, Idaho."

That telegram was sent in compliance with the request of the governor.. It did not mean that the troops should make arrests; it was expected that the officers would only support the arrests, protect the arrests, as Captain Batchelor had wired me he was already doing with reference to the seizure of arms. The details were not all included in the telegram, because it was unnecessary, and by being thus particular in answering this question, I do not mean to say or admit that arrests could not have been made by my order or by an officer's order and my troops, had occasion called for it or rendered it necessary under martial law. The method adopted and pursued was adopted and pursued because it is generally understood among army officers that in the extreme situation of martial law it is better to utilize all of the civil facilities and officials that the situation will admit of, and to interpose as little of the bayonet as possible.

General Merriam's orders to his subordinate officers all show conclusively that the troops were not to make any arrests. The following telegrams are cited on that point:

WARDNER, IDAHO, *May 7, 1899.*

Lieutenant LYON, *Thompsons Falls:*

Governor of Montana has ordered sheriff of Missoula County to make arrests of fugitives. Return with the prisoners you have to-morrow morning, delaying in Missoula long enough to permit your deputies and Missoula sheriff to make arrests there, then come to Mullan.

MERRIAM, *Brigadier-General.*

WARDNER, IDAHO, *May 7.*

Lieutenant LYON, *Thompsons Falls, Mont.:*

Send injured man to Harrison with attendant. It is not expected that troops make arrests in Montana; only receive the prisoners for safe-keeping. Governor of Montana has promised to cause the arrest of escaping rioters. Await his action till Monday noon, then return to Mullan and await further orders, if no action by Montana authorities.

MERRIAM, *Brigadier-General.*

WARDNER, IDAHO, *May 9, 1899.*

Lieutenant LYON:

Conditions named in your telegram have been anticipated. Be guided by Judge Knowles. We must yield to civil authority in Montana, but will try to find Bratton, who left here with United States warrants for service in Montana. If not heard from, wire postmaster at Butte and Helena, asking if he is there.

MERRIAM, *Brigadier-General.*

With regard to the alleged unlawful sending of troops to Montana no charge of this character is contained in the resolution, and it has never been a matter of controversy between the governor of Montana and the governor of Idaho, or between the governor of Montana and the Federal Government. That General Merriam and Captain Lyon fully understood their rights and limitations in the matter is made clear by the following extracts from the correspondence bearing on the subject:

Merriam to Adjutant-General, United States Army, May 5, 1899:

Understand governor Montana will surrender fugitives escaping over the Montana trails. I will furnish escort to Idaho sheriff to receive them.

Merriam to Lyon, May 7, 1899:

It is not expected that troops make arrests in Montana; only receive the prisoners for safe-keeping.

Merriam to Lyon, May 7, 1899:

Governor of Montana has ordered sheriff of Missoula County to make arrests of fugitives.

Lyon to Merriam, May 9, 1899:

I earnestly advise temporarily abandon Federal charges, substituting State offense, to expedite extradition, which should be hastened.

Merriam to Lyon, May 9, 1899:

Conditions named in your telegram have been anticipated. We must yield to civil authority in Montana.

Governor of Montana to Lyon, May 9, 1899:

The State of Montana will not interpose any objections to removing prisoners to Idaho without requisition papers. This is your authority.

Merriam to governor of Montana, May 15, 1899:

Lieutenant Lyon reports exact compliance with his orders and instructions.

Governor of Montana to Merriam, May 17, 1899:

I am pleased to see you were entirely misrepresented in the statements made in the press. Your letter with copies of telegrams discloses that at all times you recognized the proper civil authorities.

That due regard was given to the rights of the innocent, and that General Merriam thoroughly understood the instructions from the War Department and his powers under the law, and that he exercised wise discretion in executing orders received from Washington and in issuing orders and instructions to his subordinates is best illustrated by quoting his letter of May 24, 1899, to Maj. Allen Smith, who was left in command of the troops in Shoshone County when the General returned to his headquarters at Denver, Colo., in connection with telegrams between the commanding officers in Shoshone County and the Adjutant-General, as follows:

WARDNER, IDAHO, *May 24, 1899.*

Maj. ALLEN SMITH, *First Cavalry.*

SIR: In my absence you will become the senior officer on duty with troops in this county, now under martial law by proclamation of the governor of Idaho, dated May 3, 1899. The troops are here by order of the President, to aid the State executive in maintaining order and restoring the State government to its legitimate functions. To this end we are exercising the extraordinary powers which obtain under martial law, but we must not forget the necessity of using this power with great care and moderation, to the end that while exacting prompt submission of all persons to all measures needful to the object we have in hand, we may not overdo it to the annoyance of the innocent, or even to the needless distress of those who may have offended.

It is quite impossible to give specific instructions to meet contingencies that may arise for the reason that conditions can not be fully anticipated. Constant vigilance and prompt action may sometimes prevent or nip in the bud tendencies which might otherwise lead to serious conditions. To this end the magazines containing explosives among the mining properties have been put under guard. Saloons may be closed for similar reasons whenever they appear to be a source of danger, and many other acts along the same line, such as forbidding gatherings of excited people, the issuing of inflammatory publications, etc.

With these hints I do not doubt that your experience and good judgment will enable you to deal successfully with any questions likely to arise. The acute stage has passed, and the game is now merely one of waiting till the civil officers and courts can be set up and resume their functions, and the local industries, lately paralyzed by mob violence, shall have time to reorganize and resume operations.

All requisitions for forage and subsistence will be forwarded to headquarters, Department of the Columbia, at least ten days before supplies are required.

Very respectfully,

H. C. MERRIAM, *Brigadier-General.*

WASHINGTON, D. C., *May 31.*

Brigadier-General MERRIAM,
Commanding Department of Colorado, Denver, Colo.:

You will instruct Major Smith, commanding at Wallace, that he is to use the United States troops to aid the State authorities simply to suppress rioting and to maintain peace and order. These were your original instructions. The Army must have nothing whatever to do with enforcing rules for the government of miners or miners' unions. That is a matter for the local authorities to deal with.

R. A. ALGER, *Secretary of War.*

DENVER, COLO., *June 1, 1899.*

ADJUTANT-GENERAL ARMY, *Washington, D. C.:*

Telegram dated yesterday and signed by Secretary of War relating to duties of troops in Shoshone County, Idaho, received and forwarded to Major Smith, with instructions to keep well within its limitations. In this connection, is it expected that troops be used to guard prisoners arrested by State authorities or magazines containing explosives within the region declared by the governor as in a state of insurrection and therefore understood to be under martial law? These and perhaps other precautions are needful, in my opinion, to prevent further violence and crime.

MERRIAM, *Brigadier-General.*

WASHINGTON, D. C., *June 2, 1899.*

Major-General MERRIAM, *Denver, Colo.:*

In reply to your telegram of yesterday, Secretary of War directs me to say that while the insurrection continues and the governor of Idaho requires your aid you will continue to assist the State authorities to preserve the peace and protect life and property. You will take whatever precautions are necessary to prevent further violence and crime.

H. C. CORBIN, *Adjutant-General.*

WALLACE, IDAHO, *May 30, 1899.*

The ADJUTANT-GENERAL UNITED STATES ARMY,
Washington, D. C.:

Replying to telegram sent General Merriam May 26, miners are required to sign following permit: "I did not participate actively or otherwise in the riots which took place at Wardner on 29th April, 1899. Believing that the crimes committed on said date were actively incited, encouraged, and perpetrated through and by means of the influence of the miners' union of the Cœur d'Alene, I hereby express my unqualified disapproval of said act, and hereby renounce and forever abjure all allegiance to the said miners' union, of which I was a former member, and I solemnly pledge myself to obey the law and not to again seek membership in any society which will encourage or tolerate any violation of the law."

The governor's proclamation forbids mine owners to employ at underground work any man who fails to present a permit issued in accordance with above.

The troops of my command have been used to guard men arrested and turned over by the civil authorities at Wardner. Troops have also been present when arrests were made.

ALLEN SMITH, *Commanding.*

WARDNER, IDAHO, *June 3, 1899.*

ADJUTANT-GENERAL UNITED STATES ARMY,
Washington, D. C.:

Men who have been arrested charged with complicity with the riots here are still being guarded by me. The civil authorities are not prepared to take charge of and guard them. Trials have not begun, because attempt has been made to get writs of habeas corpus. These have been denied by the State supreme court, and claim is made that the matter will be carried into the Federal courts. No acts of violence have been committed since my arrival here (May 9), but relations of sympathizers with arrested men with the remainder of the community are so strained that I am convinced only the presence of Federal troops prevents bloodshed, arson, and other acts of violence.

LEAVELL, *Commanding.*

The orders of General Merriam were faithfully and strictly obeyed and the troops were only used for the purposes originally intended. This is affirmatively shown by the testimony of General Merriam (p. 1805):

> I do not recall any instance where my instructions were neglected or disobeyed, either by my own observation or by any reports that came to me. So far as I know they were completely carried out.

The second clause of the third "Whereas" charges that the prisoners were held by the military under the most brutal and tyrannical conditions. This charge is not supported by the evidence.

Some of these charges were of such a serious character as to demand specific attention. The committee examined into each of them with great care and in detail.

From all the testimony in the case the committee finds that these charges of cruel and inhuman treatment on the part of officers and enlisted men of the Army are not proven. Many of them are shown most conclusively to be untrue, and some are so preposterous and absurd as not to be worthy of credence. The testimony of all these witnesses is so conclusively contradicted in so many particulars that the balance of the testimony is believed to be unworthy of credence. The testimony of L. J. Simpkins in this respect is worthy of some special consideration. He is under indictment for complicity in the crimes of April 29, and was the ringleader in the plot to effect an escape from the prison by tunneling out. Because of his dangerous character, after the prison was abandoned, he was sent to the county jail, where he was under the exclusive charge and control of the civil authorities. The incident narrated by him with which he connected the name of Mr. Burch, superintendent of the Bunker Hill and Sullivan mine, is flatly contradicted by Mr. Burch in his testimony given in the trial of Paul Corcoran (pp. 149–151, evidence in Corcoran case). Simpkins stated that one Donelson told him he was authorized by Mr. Forney, acting prosecuting attorney, to offer him (Simpkins) $10,000 if he would implicate two men in the blowing up of the mill; that Mr. Forney came to the prison sometime after that and had another party ask him if he was ready to inform Donelson on anybody. Forney flatly denied this, but swore that a man came to him representing that Simpkins wanted to confess provided he could go unpunished. The remarkable character of the testimony offered by this witness appears from the fact that he seems to have observed everything and to have been every place and all places at the same time. He swears positively to facts which could not possibly have come under his personal observation. Most of his testimony seems to be based on hearsay and rumors, and what he swears to positively your committee disbelieves entirely.

It is proved that no complaints of this character were ever presented to General Merriam or any of his officers, although it is clearly shown that free opportunity was offered at all times for such purpose.

Many of these charges against the officers and men of the Army are of such a vicious and baseless character as to call for the righteous condemnation of every fair-minded citizen. Some of the charges of cruel treatment by being prodded by bayonets are made against troops belonging to the cavalry branch of the service, who are not armed with bayonets.

It is also to be noted that many of these and other charges were made against officers and enlisted men now serving in the Philippines, and whose testimony could not be obtained for this investigation. None of these grave charges were made against officers who could be or were present before this committee.

As to all these charges of cruelty and inhuman treatment, this committee arrives at the same conclusions as are expressed by General Merriam in his testimony (p. 1815):

> I know nothing of any such conditions, and I want to add to that answer that in thirty-eight years of continuous service in the Army I have never known a soldier on guard to refuse to escort a prisoner, at any hour of the day or night, to obey a call of nature, and that I have never known a prisoner under guard of a soldier to be struck with a musket or jabbed with a bayonet; and, therefore, all of these stories are to me utterly incredible.

There was considerable testimony concerning the prison which is of a reckless and unreliable character. The State alone had charge or control over the building and its appointments.

None of these conditions complained of as to food, shelter, and clothing, had they been sustained, were within the control of the military forces. The Army could not issue blankets nor repair buildings. The responsibility rested solely on the State.

The proof shows that General Merriam was always ready to listen to complaints.

The preponderance of testimony shows beyond doubt that the hospital was a comfortable place, and that every attention and comfort was afforded those who were so unfortunate as to be obliged to go there.

It is charged (p. 259) that the effect on the health or physical condition of the men by being kept in the prison for three or four months was that they were all broken down physically; more than half of them were sick.

It is charged that much of the sickness in the prison was due to the treatment men received from the soldiers. That it was for want of protection, for the want of decent food, for the want of clothing, and for the want of shelter. That such exposure caused the sickness. It is also charged that the men complained frequently to the army officers about their treatment but they paid no attention whatever to it; that they would never listen to them.

These charges were absolutely disproved. The health of the prisoners was far above the average, and they suffered very little sickness. They came out of their confinement generally in better physical condition than when they went in. The Army had nothing to do with furnishing protection, food, clothing, or shelter, and no complaints were made to army officers which did not receive attention.

Only three of the prisoners died, Mike Devine, Miles McMillan, and Nels. Donelson.

The proof shows that the death rate in the prison was much lower than the average; that none of the conditions prevailed in the hospital as are alleged. There was ample care and attendance in the hospital, and no one there suffered for lack of medicine or attention.

The best quarters obtainable were used when the prisoners were first arrested, and at the earliest moment possible a prison was erected by the State authorities. The prisoners were transferred to it on May 19 and 20, just sixteen days after the first arrests were made.

General Merriam was solicitous as to the welfare of the prisoners, and wired the governor on May 11, only eight days after the arrests were first made, urging an improvement of the conditions of the prison and prisoners.

Some testimony was adduced tending to show grounds for complaint on account of the quality of the food furnished to the prisoners and the manner in which it was served and cooked.

That very little credence is to be given to these stories of poor food and starvation is apparent by the following circumstance testified to by Captain Edwards, U. S. A. (p. 1914):

> The mother of one of the prisoners came down to the camp from her residence up the canyon in a very excited condition and told me that she had been told at home that her son was dying, and perhaps at that time was dead, due to this treatment. Her name was Mrs. McLaughlin. Her son was a young man about 20, I imagine, or 21, a strong, healthy lad. I said, "Did they really tell you that?" She said, "Yes; they told me I would probably find him dead when I got there." I said, "Mr. Coakley, I think you had better bring McLaughlin out." He brought this great big fellow out. She looked at him and said, "Why, my son, you look a great deal better than you did when you came in here."

From the overwhelming preponderance of the testimony on this point several things are proven absolutely:

First. That the State had entire charge and control of feeding the prisoners. The State employed the cook and prepared the meals, and the State purchased all the supplies. At first the sum of 63 cents per day was allowed for the subsistence of each prisoner; subsequently a new contract was made and this allowance was reduced to 56 cents. This was more than twice the amount allowed for the per diem subsistence of the soldiers who were guarding these prisoners.

Secondly. It is shown by the evidence, beyond any question whatever, that these men were well fed; that they had a great abundance of food, and that they were fed much better than the soldiers. If any of these prisoners did not have enough to eat at any time it was their own fault or the fault of some of their comrades. The testimony shows that a great deal of the food was wasted by the prisoners, and that much of what was furnished was thrown away by them. The statement that these prisoners would have starved but for the outside contributions of friends is contradicted by the most positive proof. The Regular Army officers on duty there had their separate mess, and paid out of their own pockets for everything they had. Some of them availed themselves of the opportunity to purchase some of their supplies from the State, and found that they were of the very best quality. The story that the prisoners had to wash silverware belonging to the officers is pure fiction.

It is undoubtedly true that there was some suffering and inconvenience at first on account of the large number of men arrested by the State authorities. Some 300 of them were arrested by the governor and brought down in the nighttime, when full and complete arrangements for their comfort could not be made. The provisions for their accommodation were very inadequate, and for the first few days there was much inconvenience and undoubtedly a little suffering. For this state of affairs, however, the troops were not at all responsible, and not a particle of blame can attach to General Merriam or any of his subordinates.

As to the general conditions of the new prison, the testimony of General Merriam states the facts (p. 1805):

> I did frequently visit the prison. I do not think I ever missed a day that I did not go through the prison and inspect the sanitary condition; inspect the food and the provisions being made for the prisoners, for I was extremely solicitous that they should be made as comfortable as possible. * * *
>
> The condition of the box cars, when it became necessary to use them, was not as good, I do not think, as in the barn, although they were furnished with an abundance of hay to sleep on, which was advanced from our supply, to be returned as soon as the State could procure it.

From page 1802 of the record:

> If I might make comparisons here I would say that, as a means of shelter from the weather and from the ground, the prisoners were at all times, while I was in camp, better situated than the troops, who slept on the ground with nothing but hay to lie on. The prisoners had both hay and floors under them. They were deficient, however, in bedding and blankets.
>
> The next morning I went to Burke by a special train, where I sent word throughout the entire canyon that if any of the people desired to send blankets or overcoats to the prisoners at Wardner they could be sent down on my train and I would be glad to see that they were supplied to the men.

From page 1807 of the record:

> I saw no rude or rough treatment on the part of the soldiers toward any prisoner. I was present every day and through the prison more or less, among the prisoners, frequently talking with them, and never heard any complaint of their treatment by soldiers or otherwise. This leads me to the testimony given by Mr. Cornell. * * * He states that he had two interviews with me on the subject of mistreatment to the prisoners. I have absolutely no recollection of any interview with Mr. Cornell at any time.
>
> Solicitous as I was for the comfort of those prisoners, and careful as I was to listen to any complaint made by any prisoner, I feel perfectly sure Mr. Cornell is mistaken. No prisoner, at any time, ever talked with me in any such terms as he gives here.

The fourth charge is as follows:

> Whereas it is charged that the said Brig. Gen. H. C. Merriam did, in defiance of and contrary to the provisions of the fourth amendment of the Constitution, subject the persons, houses, papers, and effects of citizens to unreasonable and arbitrary search and seizure.

The fourth amendment to the Constitution guarantees—

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

This amendment throws a safeguard around the person, papers, and effects of every citizen. Its violation deserves the severest penalty. The evidence presented to the committee does not show unreasonable and arbitrary search of persons, houses, papers, and effects of citizens. In every case the arrests were made cautiously and with great wisdom. Every act of the military in the search and seizure of the houses and papers of the citizens was in support of the State authorities.

Gen. H. C. Merriam, in his testimony before the committee (p. 1801), said:

> My instructions to Major Morton were, what they always were, from that time forward that arrests would be made only by State deputies, or sheriffs under the protection of troops, who would also guard and safe-keep the prisoners as they were

arrested. These instructions also included all questions of search and seizure; that any search or seizures undertaken are also to be carried out by the deputies under the protection only of troops. I went so far in that direction as to order that soldiers should not even enter buildings with deputies unless some emergency should make it necessary to do so.

Testimony of Gen. H. C. Merriam is corrobated by Bartlett Sinclair, who said in answer to the question:

Q. In reference to the arrests that were made, Mr. Sinclair, please state just what part the military of the United States performed in relation to them?—A. I saw a number of arrests made, besides the one I made myself, and at no time did any officer do anything more than to act as guard. There was no attempt at an arrest—physical arrest—by the soldiers. I saw that at no time. My instructions to the deputies were that they were to make the arrests, and that the soldiers would do nothing but afford us protection against riot, and an attempt at an escape.

Several witnesses for the prosecution testify that the arrests were made by the deputies, assisted by the soldiers. Edward J. Flanagan, a witness for the prosecution, testified:

Q. You may state whether or not you were arrested or taken into custody by anybody.—A. I was arrested twice. I was arrested on the 6th day of May.

Q. Where?—A. In the town of Mullan.

Q. By whom?—A. By an agent of the governor of the State of Idaho and three negro soldiers.

In the case of seizure of the paraphernalia of the Burke Union, the military were in no way responsible, and the entire affair was under control of the State authorities. The following is the testimony of Bartlett Sinclair concerning the seizure of the safe.

Among other things they brought this safe, containing a great deal of matter which was of use to us in the investigation there and in the prosecutions.

Q. Was the safe locked when you got it?—A. The safe was locked when I got it.

Q. Did you break it open?—A. No; I informed Mr. Corcoran, who is now serving a term of seventeen years for the murder of Cheyne, that I would break the safe open unless he, as secretary of the union, would open it himself. Before consenting to do that he attempted to secure a promise from me that I would send $125 of the money in the safe to his wife. I told him I could not do that, as the money belonged to the Burke union, and would be restored to the Burke union if there was any money there. So after some questions—some talking about the matter—Mr. Corcoran agreed to open the safe, and it was opened that way.

One of the witnesses for the prosecution in his testimony flatly contradicted the reckless charge of unreasonable search. Levi R. Miller, a witness for the prosecution, says, page 129:

Mr. Miller. The civil officers and soldiers. There were two civil officers who came into my house. I left the front door open, so they could walk right in. They looked around and they asked me: "Have you got any arms here?" I told them, "No, sir; I have not. You can look for yourselves, however." "Oh, no," he said, "we will take your word for it." He started to go out. I said, "Do you want me?" He said, "No."

It is clearly proven that the military never subjected houses or persons to unreasonable or arbitrary search and seizure.

Gen. H. C. Merriam and his command are utterly absolved from this charge, and the evidence shows caution, judgment, and wisdom in the arrest and search of houses and citizens.

The fifth charge is as follows:

Whereas it is charged that the said military commander, arbitrarily and in defiance of the civil law, ordered the arrest of the sheriff of the county and the board of county commissioners and subsequently deposed them from office on the unproven pretext of neglect of duty.

The evidence presented to the committee and the records of the district court of the first judicial district of the State of Idaho, in and for Shoshone County, absolutely contradict this charge.

James D. Young, sheriff of Shoshone County, and Moses S. Simmons, William Boyle, and William R. Stimson, members of the board of county commissioners of Shoshone County, were charged by Samuel H. Hays, attorney-general of the State of Idaho, with having willfully, knowingly, and corruptly failed, neglected, and refused to perform their official duties.

Sheriff Young in the discharge of his duties was proven to be weak, inefficient, and utterly incompetent, and upon his shoulders largely lies the blame of the riot and insurrection in Shoshone County on April 29, 1899.

The law-abiding citizens demanded the arrest and removal of these corrupt and inefficient officials from their respective offices. The deputies made the arrests, while the military acted solely as a guard, and General Merriam is in no sense responsible for the arrest or deposition of Sheriff Young, and Commissioners Simmons, Boyle, and Stimson.

These officials were given an impartial trial and the court found them guilty of the charges preferred against them and removed them from their respective offices.

The following decision of the court is subjoined in proof of the statements made above:

In the district court of the first judicial district of the State of Idaho, in and for Shoshone County, Samuel H. Hays, plaintiff, *v.* Moses S. Simmons, William Boyle, and William R. Stimson, members of the board of county commissioners of Shoshone County, Idaho, defendants; and Samuel H. Hays, plaintiff, *v.* James D. Young, sheriff of Shoshone County, Idaho, defendant.

These two cases are both founded upon Revised Statutes 7459, and will be disposed of together, inasmuch as the facts alleged against the defendant Young are also alleged with others against the defendants Simmons, Boyle, and Stimson, and the principles governing both cases are alike.

The information filed in this court against said defendants charges each of them, in their official capacity, with having willfully, knowingly, and corruptly failed, neglected, and refused to perform the official duties pertaining to their respective offices.

The specifications of official neglect of duty alleged against the defendant commissioners consists:

(*a*) In a failure to meet at the county seat of Shoshone County on the second Monday of January, 1899, as required by law.

(*b*) In failing to make a list of jurors as required by law.

(*c*) In approving an insufficient bond of the sheriff.

(*d*) In approving an insufficient bond of the tax collector.

(*e*) In approving an insufficient bond of the assessor.

(*f*) In approving an insufficient bond of the treasurer.

(*g*, *h*, *i*) In allowing and paying to the sheriff commissions on money by him collected for State and county licenses.

(*j*) In approving and paying a bill of the sheriff for bringing five prisoners from Murray to Wallace.

(*k*) In permitting liquor licenses to be issued without application therefor or bonds being required.

(*n*) In failing to take proper steps to prevent and suppress a riot which, it is alleged, occurred in said county on April 29, 1899.

The specifications of official neglect of duty alleged against the defendant sheriff consists—

(*a*) In neglecting to intercept or arrest persons alleged to have destroyed certain property belonging to the Bunker Hill and Sullivan Mining and Concentrating Company at Kellogg, in this county, on April 29, 1899.

(*b*) In neglecting to take proper steps to prevent and suppress a riot which, it is alleged, occurred in said county on April 29, 1899.

The defendant commissioners, answering specifications *a* and *b*, deny the same, and as justification allege that an election was held in said county in November, 1898, to determine the county seat of said county; that at such election Wallace was selected as the future county seat; that on the second Monday of January, 1899—the time for holding the first meeting of said board—the records and officers of said county were at Murray; that a suitable building had not been provided at Wallace, and no vault or proper receptacle for the preservation of the county records had been provided at Wallace; that all the county business of said county was being transacted at Murray, the former county seat, and that the outgoing county attorney, C. W. Beale, informed the board that it was proper to hold said first meeting at such former county seat, and that in so holding the said meeting, at which time the jury list was by them made, they acted honestly and in good faith and under legal advice.

In answer to specifications *c*, *d*, *e*, and *f* they deny the allegations and allege the qualifications of the sureties upon the bonds approved, and as justification allege that such bonds were submitted to the county attorney, who advised them that the same were good and sufficient and in accordance with law, and that in the approval of such bonds they acted judicially.

In answer to specifications *g*, *h*, and *i* the defendants deny that in approving the account of the sheriff for commissions on the collection of moneys for State and county licenses they acted knowingly, willfully, or corruptly, and allege that in approving such account they acted judicially.

In answer to specification *j* the defendants deny that they knowingly, willfully, or corruptly approved the account of the sheriff for bringing five prisoners from Murray to Wallace, and allege that in approving the same they acted judicially.

In answer to specification *k* the defendants deny that they knowingly, willfully, or corruptly, or at all, permitted licenses for the sale of liquors to be issued, and deny that they knowingly, willfully, or corruptly, or at all, permitted said licenses to be issued without application or bond, as required by law.

In answer to specification *n* the defendants deny that they had any information of a contemplated riot, and deny that they knew that the sheriff of said county had failed to take proper precaution, or any precaution, to prevent the same, and deny that they knowingly, willfully, or corruptly failed, neglected, or refused to supervise the official conduct of said sheriff, and deny that, owing to the neglect of said sheriff or of these defendants, a riot occurred in the town of Kellogg on April 29, 1899, and allege that said board were not informed that a riot would take place at that place, or any other place, and deny that they had power or authority to direct the sheriff, or had control over the sheriff, or that they were in session, or could have acted in the premises.

Defendants affirmatively allege, in answer to the information as a whole, that each and every act, matter, and thing charged in said information, if done by the defendants, was done in the honest belief that they were honestly discharging the duties of their said offices, and that they have, to the best of their ability, in all their official acts, acted honestly and without corrupt or improper motive, and, as they believed, in pursuance of the law and for the best interests of the county of Shoshone and the people thereof, and without benefit to themselves.

The defendant Young, as answer to the information, admits the destruction of the property of the Bunker Hill and Sullivan Mining and Concentrating Company on April 29, 1899, and denies that he neglected or refused to interfere, or arrest any of the parties destroying said property, and denies that he connived or assisted in the destruction of said property, and denies that during said destruction two persons were killed and murdered.

The defendant, further answering, denies that armed men proceeded to the town of Kellogg for the purpose of destroying property and for the purpose of assaulting, maltreating, or driving out of said mines the employees of the Bunker Hill and Sullivan Mining and Concentrating Company, and denies that he had any knowledge of the purpose of said armed men, or that any trouble was likely to occur, and denies that he neglected, knowingly, willfully, or corruptly, to take proper steps to prevent said disturbance or protect property or employees, and denies that such armed persons killed or murdered the alleged John Schmidt or James Cheyne, and denies that he neglected or refused, knowingly, willfully, or corruptly, to take steps or do anything looking to the arrest or detention of the persons engaged in the violation of law as alleged in the information.

And alleges that in all matters in relation to the difficulties of April 29 he endeavored to discharge the duties of his office faithfully and honestly and to the best of his ability.

These answers of the defendants present two issues for decision: First, did the defendants neglect to perform their official duties? Second, if so, were they justified in their acts?

The proceeding under section 7459 for the removal of public officers is not a criminal proceeding. It is purely a statutory proceeding, and to the statute we must look to ascertain what is required to sustain the information brought under this section.

As applicable to the allegations in the two informations in these cases, we find that section 7459 provides: "That when an information in writing, verified by the oath of any person, is presented to the district court, alleging that any officer within the jurisdiction of the court has refused or neglected to perform the official duties pertaining to his office, the court must cite the party charged to appear before the court and proceed to hear in a summary manner the information and evidence offered in support of the same and the answer and evidence by the party informed against." It will thus be seen that the statute requires the plaintiff to show that the defendant has refused or neglected to perform the official duties pertaining to his office.

The powers of the board of county commissioners in this State are statutory and limited, and such board can exercise only those powers granted to them by statute, and when the defendants accepted the office of county commissioner it was their duty to familiarize themselves with the power conferred upon them by the laws of this State, and without such effort on their part they themselves would show their unfitness and incompetency to hold such public office.

The board of county commissioners is the financial and business agent of the county. They have supervision over all county officers, and have full power to do and perform all acts and things which may be necessary to the full discharge of the duties of the chief executive authority of the county government. They hold their office under the law and are bound by the law.

Ignorance of the law will not excuse a person from obeying its commands, and especially is this true of a public officer whose duties and powers are purely statutory.

It would be dangerous doctrine for this court to lend judicial sanction to misconduct in office because some other officer has established a rule of action of his own without the sanction of law and in utter disregard of its provisions. Section 7459 fixes the duty of the court, and it is that if the charge be sustained, and in this case if the evidence prove, that the defendants have refused or neglected to perform the official duties pertaining to their respective offices, as specified, then a decree should be entered depriving such persons of their office. It is not a question of intent, but a failure or neglect to perform the duties imposed by law upon such officers. There are no words of qualification in the statute, and in the absence of such words the court has no power to supply them. It is alike the duty of the court to obey this legislative command as it was the duty of the defendants to perform their official duties.

Public officers ought to be qualified for the duties of the office which they accept, and at least ought to show some disposition to familiarize themselves with those duties.

Neglect in the sense of this statute is a failure to do what is required, and may result from a corrupt motive or incompetency.

By this act the legislature did not contemplate the removal of an officer for slight or trivial neglect of official duty, but did intend that when the acts disclose a failure to perform a duty strictly imposed by law, and that such duty is of such a character that the officer must know his official obligation, then a neglect to perform forfeits the right to such office.

In view of these general principles, let us examine the charges and evidence offered in support thereof.

The pleadings admit and the evidence proves that the commissioners met at Murray, in this county, in regular session on January 9, 1899.

Revised Statutes, section 1755, provides that the regular meetings of the board of commissioners must be held at their respective county seats on the second Mondays in January, April, July, and October of each year.

An election was held in Shoshone County in November, 1898, for removal of the county seat. On November 18, 1898, the board of canvassers canvassed the vote and recorded the same and made the certificate required by section 127, Laws of 1891, page 96, showing 2,471 votes in favor of removing the county seat and 864 votes against. This certificate was filed on November 18, 1898, and was published first on December 3, 1898.

Section 128 of this act provides that the county seat is removed when these acts have been performed by the board of canvassers.

It is evident that the board whose term expired on January 9, 1899, should have made all necessary provisions for the removal of the county records and offices from

Murray to Wallace. They did not do so, and when the defendant commissioners came into office they found all county records and offices still at Murray and no provisions made for either records or offices at Wallace, the new county seat. To qualify it was necessary for the defendant commissioners to go to Murray, organize and hold a session, and take the necessary steps to carry out the will of the people in transferring offices and records from Murray to Wallace. At this session a jury list was made by the board. Under section 3947 of Revised Statutes this jury list could have been prepared at a subsequent meeting of the board, but the fact that a list was prepared at a session of the board necessary for them to hold and at a time when all records from which such list was prepared was at Murray, certainly could not be adjudged such neglect of official duty as is contemplated by section 7459.

Specifications *c*, *d*, and *f* may be considered together, as all relate to the approval of the bonds of the sheriff, tax collector, assessor, and treasurer. No evidence has been offered in relation to the bond of the treasurer, and this specification will be dismissed.

Revised Statutes, sections 392 and 1759, require that all bonds of county officers shall be approved by the board of county commissioners. Section 397 of the Revised Statutes was enacted and approved January 5, 1887. This section requires the justification of sureties, and provides that a bond shall not be accepted or approved until such justification be made. In 1887 section 396 of the Revised Statutes was enacted, which provides that no person shall be accepted as surety on an official bond except he shall, during the year immediately preceding, have been assessed and paid taxes, in his own right, upon property to the amount for which he becomes surety.

If the county commissioners approve the bonds in question in the light of the law, then this section must have been before them. In fact, it was before them and could be their only guide. It was made for the protection of the public and in order that the property of a surety might be free and unencumbered by a prior tax lien.

Let us examine these bonds as the law required the county commissioners to examine them.

Upon the sheriff's bond there are 22 sureties, qualifying in the aggregate amount of $21,000. Of these, 6 were delinquent in their taxes at the time they signed the bond and qualified in the sum of $6,000. Two sureties qualifying in the sum of $1,000 each do not appear upon the assessment roll. Two sureties, one qualifying for $1,000 and the other for $500, were assessed for much less than they qualified for. This leaves 12 bondsmen presumably qualified in the sum of $12,000.

Revised Statutes, section 1828, subdivision 4, fixes the bond of the sheriff at $10,000. Revised Statutes, section 398, provides that when the penal sum of any bond required to be given amounts to more than $1,000 the sureties may become severally liable for portions of not less than $500 thereof, making in the aggregate at least 2 sureties for the whole penal sum.

We find, then, the bond of the sheriff for $10,000 approved and accepted by the board with 12 qualified sureties who justify and obligate themselves in the sum of $12,000. Instead of making in the aggregate at least 2 sureties for the whole penal sum as the law required, we find but little more than 1. Instead of a security of $20,000, as the law requires, we find the sheriff's bond approved by the commissioners with a security of $12,000.

Upon the assessor's bond there are 20 sureties qualifying in the aggregate amount of $11,500. Of these 7 were delinquent in their taxes when they signed the bond and qualified themselves in the sum of $4,000. One surety, qualifying in the sum of $500, does not appear upon the assessment roll. Two sureties, each qualifying in the sum of $500, were assessed for less than they qualified for. This leaves 10 bondsmen, presumably qualified in the sum of $6,000.

Revised Statutes, section 1828, subdivision 4, fixes the bond of the assessor at $5,000.

We find, then, the bond of the assessor for $5,000 approved and accepted by the board with 7 qualified sureties, who justify in the sum of $6,000. Instead of making in the aggregate at least 2 sureties for the whole penal sum as the law required, we find but little more than 1; and instead of a security of $10,000 we find the bond of the assessor approved with a security of $6,000.

Upon the tax collector's bond there are forty-eight sureties, qualified in the aggregate amount of $32,750. Of these nine were delinquent in their taxes at the time they signed the bond and qualified in the aggregate amount of $6,500. Two sureties qualifying, one in the sum of $1,000 and the other in the sum of $500, do not appear upon the assessment roll. Four sureties, one qualifying in the sum of $1,000 and three in the sum of $500 each, were assessed for much less than they qualified for; this leaves 33 bondsmen presumably qualified in the sum of $22,250.

Revised Statutes, section 1828, subdivision 7, as amended by the session laws of 1889, page 16, fixes the bond of the tax collector at not less than $5,000 and not more than $50,000, to be fixed by the board of county commissioners.

The bond of the tax collector in this case was given for the sum of $15,000, which it is presumed was the amount required by the board of county commissioners. We then find the bond of the tax collector for $15,000, approved and accepted by the board, with thirty-three qualified sureties who justify in the sum of $22,250, and, instead of a security of $30,000, as the law required, we find the board of county commissioners accepted and approved the tax collector's bond with a security of $22,250.

It is alleged in the answer, and some evidence has been offered in support thereof, that these bonds were submitted to the county attorney for an opinion as to their sufficiency. It would have been proper for the county attorney to advise the board of county commissioners as to the legal form of the bonds, and as to whether or not the bonds had been properly executed. But as to whether or not the security was such as the law required was a matter entirely for the board to determine in the method directed by the statute. The duty of passing upon the sufficiency of bonds rests with the board and not with the county attorney.

I find also from an examination of these bonds that some of the sureties appear on all three of the bonds, and many of the sureties appear upon both the bond of the tax collector and assessor. This court can not lend judicial sanction to such utter disregard of the plain, positive provisions of the statute as has been evinced by the defendants in the approval of these bonds. The law provides for security to be given by certain public officers; this is for the protection of the public, and it is the duty of those officers who are clothed with the authority of approval of such bonds to see that the public are protected and that such bonds as the law requires are executed.

It is to be presumed that inasmuch as the legislature has passed laws fixing the qualification of sureties, it was done with the intention that the officer giving such bond should comply with the statute.

The approval of these bonds was a clear violation of the duties of the defendants as public officers, and one that could not have been committed except knowingly and willfully.

Specifications *g*, *h*, and *i* may also be considered together, as they relate to the payment of commissions to James D. Young, sheriff, on the collection of money for State and county licenses issued during the first quarter of 1899.

The defendants have sought to justify their action in paying the sheriff this commission under subdivision 2, section 2158, of the Revised Statutes of Idaho.

In the case of Cunningham *v.* Moody, 2 Idaho, page 862, in passing upon subdivision 5 of this same section, the supreme court of this State held that the same was repealed by an act passed and approved March 13, 1891, found in the First Session Laws, beginning at page 174. This latter act fixes the fees of the sheriff the same as it does the auditor, and applying the same rule of construction, as is applied in the above-cited case, subdivision 2 was also repealed by this act and will not justify the defendants in paying said commission.

Section 7, article 7, of the constitution also requires that all taxes levied and collected for State purposes must be paid into the State treasury.

The defendants claim, however, that in allowing this amount they acted judicially. This question has been determined otherwise by the supreme court of this State in many cases, the last of which is Fremont County *v.* Brandon, 56 Pacific, page 264.

The supreme court in that case says: "The powers of the board of county commissioners are statutory and limited. Such boards can exercise those powers only granted to them by the statute. In the case at bar the commissioners exceeded their powers by allowing claims in favor of the appellant which are not county charges."

This principle applies directly to the action of the commissioners in allowing the sheriff a commission for the collection of State and county licenses. They have no authority to allow any claim against the county except such as is authorized by statute, and in this case the allowance of the claim, being without authority of law, was illegal and void, and as the commissioners are authorized to act only as the law directs, they would be guilty of willful neglect of official duty in allowing a claim not authorized by law.

As to specification *j*, we turn to the Session Laws of 1891, beginning at page 174, under section 2, fixing the sheriff's fees, and we find that under the evidence in this case the sheriff was entitled to the following fees:

Seven dollars for bringing over the first prisoner from Murray to Wallace and $16 for bringing over the other four prisoners, making in all $23.

The commissioners, in allowing this bill, allowed the sheriff $19 in excess of that authorized by law. It was their duty to go to the statute and ascertain the legality of this charge, and with this statute before them they knew its provisions.

Speaking of this statute and the constitution, the supreme court of this State, in Eakin *v.* Nez Perces County, 36 Pacific, 702, say:

"In this act the legislature have perfected, in extensive and laborious detail, the fees chargeable by the sheriff for every service incumbent upon or required of him except for his attendance upon the district court. There is no provision for the payment of anything in the pay of compensation by the county except in the event of the fees of the officer falling below the minimum fixed by the statute. We are now asked by the plaintiff to do what neither the makers of the constitution nor the legislature have seen fit to do—that is, provide a per diem compensation to the sheriffs of the different counties of this State by construction. But there is no predicate upon which to base a construction; there is nothing to construe. We are not at liberty to assume that the omission of a provision for the payment of sheriffs for attendance on the district courts was an oversight on the part of the legislature, and even if it were the courts have no power or authority to supply such omission. That duty is imposed upon another branch of the government."

This case would seem to settle the legality of the charge made by the sheriff for bringing prisoners from Murray to Wallace.

The statute above referred to fixes the sheriff's charges, and the commissioners in allowing his bill authorized the drawing of money from the county treasury as compensation for services which the legislature have not seen fit to provide for, and in the absence of legislative authority the commissioners have no right to take money from the county treasury to pay anyone, and in doing so they convict themselves of willful and knowing neglect of official duty in not rejecting said claim.

Specification *k* relates to the issuance of liquor licenses in said county for the first quarter of the year 1899, without application and without bond.

Under an act of the legislature approved February 6, 1891, found in the Session Laws of that year at page 33, we find specifically laid down the method by which license for the sale of intoxicating liquors may be procured. Section 2 requires that application for liquor license be made to the board of county commissioners. Section 3 requires that before any license shall be issued the applicant shall produce before the board a receipt of the sheriff showing that he has paid into his hands the amount due for such license. Section 3 also requires that before such license shall issue the applicant shall execute and deliver to said board his bond to the State of Idaho in the penal sum of $1,000 with at least two good and sufficient sureties, which bond is to be approved by the board of county commissioners.

We find from the evidence in this case that the defendant commissioners approved the bill of the sheriff for commission upon liquor licenses without any application being made to the board for the same and without the execution of any bond, as the statute requires.

This act is for the protection of the public, and by virtue of the office of the defendant commissioners and the provisions of this statute they must have known that when they approved the sheriff's account the same was being approved for the issuance of licenses in contravention of this statute. This is a most flagrant violation of official duty. It would seem that the commissioners, in respect to this matter, have utterly disregarded and set at naught the provisions of the statute. They have approved a rule of action unauthorized by any statute of the State. And if any such conduct of the commissioners was the result of ignorance and incompetency it is the most willful neglect of official duty that could be imagined. There seems to have been no disposition on the part of the defendants, as the chief executive authority of the county, to look into or inquire as to what their official duties were, or that they were under any obligation to the people who did them the honor to place them in office.

When the commissioners approved the bill of the sheriff for commission upon these licenses they thereby approved his actions in carrying on a wholesale and retail license business. Their attention must have been directed to the provisions of this statute when at their January meeting, 1899, they approved the two bonds of Sam Bloyer. It must have occurred to the board when they examined these bonds, for the purpose of ascertaining their sufficiency, that they were given under the requirements of some statute, and the examination of that statute for the purpose of ascertaining whether or not these bonds complied with the law would have informed them that bonds in all cases where licenses were to be issued were required of the applicant. And when they approved the bill of the sheriff in April, 1899, for commission upon licenses, they must have known that bonds were required and that it was their duty to see that they were executed and that application for license was made as required by the statute. They convict themselves of a willful and knowing neglect of official duty by their own testimony.

This brings us to the consideration of the facts alleged in specification *n*.

It appears from the evidence that on the 26th day of April the representatives of the Bunker Hill and Sullivan Mining and Concentrating Company notified each of the county commissioners of the then condition of things prevailing at the Bunker Hill mine. They were advised that an armed mob of miners was using force against the employees of the Bunker Hill and Sullivan Company, and threats were made to to destroy the property of said company, and a demand was made of the commissioners for the protection of the law; and they were further advised that the county would be held responsible for any damage done. The only steps taken by the county commissioners in response to this notification was a telephone communication between Mr. Simmons and Mr. Burbidge, the representative of the Bunker Hill and Sullivan Company, and also a conversation between Mr. Simmons and the sheriff, in which conversation the sheriff informed the commissioners that there had been a little trouble there and that some men had been preventing men from going to work, but at that time everything was all right, and in which conversation Mr. Simmons informed the sheriff to see that there was no property destroyed, and that if he thought it necessary he (Simmons) would go over there. No communication was had between the members of the board after this notification.

Under the statute of this State the board of county commissioners is the chief executive authority of the county. They have general supervision over all county matters and all county officers, and, as the representative of the people, it would seem to have been their duty, when notified of an anticipated difficulty, such as was embraced in the notice from Mr. Burbidge to each member of the board, and that the county would be held liable for any damage done, to have taken sufficient interest in the matter to have personally visited the scene of the difficulty and met in special session for the purpose of taking such action as might have been necessary for an examination of the facts.

Section 1757 of the revised statutes authorizes special meetings of the board to be called at any time upon the call of a majority of the board. This section also provides that five days' notice thereof must be given to each member not joining in the order, by the clerk. But I apprehend that there can be no question under this statute and the general powers of the board as fixed by the statute but what a special meeting might have been convened at any time were all the members of the board present. And in this case, if the commissioners had investigated the conditions prevailing at Wardner and found it advisable to have held a special meeting for the consideration of such matters, they could have done so under this statute immediately, all joining in the meeting, all being present.

Under the general powers of the board of county commissioners it was the duty of the board to have supervised the conduct of the sheriff and seen that he obeyed and executed the law and protected the people of the county in life and property, and the taxpayers generally of the county, to the extent of furnishing all the protection at his command, so that the county in no way would become liable in damages by reason of any neglect of official duty. But they seem to have viewed the notification of the Bunker Hill and Sullivan Mining Company with very little concern and took no steps to protect them or their property, or their employees, or the taxpayers of the county.

The responsibilities, as indicated by the action of the members of the board in this matter as well as all other matters referred to in this opinion, seem to have rested lightly upon the shoulders of said board. They do not seem to have realized the fact that they were servants of the people or that they owed any duty to the office held by them or to the people who had placed them in office. They have prescribed their own rules of action, disregarded the plain, unequivocal provisions of the statute, and acted independently and in disregard of the requirements of the law. Just what they might have accomplished by taking hold of the difficulties which were threatened on the 26th day of April, and which finally culminated in the destruction of the Bunker Hill and Sullivan mill and other buildings and the death of two men on the 29th of April, can not be gathered from the evidence; but that it was their duty to furnish to those threatened with the destruction of property, and the people generally of the county, the strong support of the law there can be no question; and by failing to do so they have disregarded and neglected their official duties and by their acts demonstrated their incompetency and unfitness for the public trust imposed in them by the people of this county.

In conclusion, I find that specifications *a* and *b* have not been sustained by the evidence; that specifications *c, d, e, f, g, h, i, j, k,* and *n* have been proven and sustained, and findings and judgment may be prepared accordingly, removing said defendants from office.

As to the charges made in the information against the defendant sheriff, it could serve no good purpose for me to recite again the evidence offered in support thereof. The defendant in his own testimony has convicted himself of the most flagrant violation of official duty that could be imagined. The defendant seems to have utterly disregarded every obligation resting upon him by virtue of his being a peace officer in Shoshone County. From his own statement he did nothing whatever to prevent the difficulties which occurred at Kellogg on April 29. He took no steps to apprehend or arrest those participating in such unlawful acts. Men coming from communities where he had been acquainted were met by him at Wallace, and he rode on the train with them to Kellogg, heard their talk, followed in their steps, witnessed the destruction of the Bunker Hill and Sullivan Mining Company's property, and permitted, almost within his view, the murder of two men, and after the difficulty was over remained at the place of the difficulty, without either in person or by deputy following the persons engaged in the unlawful acts to the place from whence they came with a view of identifying or apprehending them. The highest peace officer of the county, conducting himself as he states in his own evidence, has disgraced the office to which he has been elected and has shown himself to be incompetent and unfit as a public servant.

Findings and a decree may be prepared sustaining all the allegations in the information against the sheriff and removing him from office.

The sixth charge is as follows:

> Whereas it is charged that the said Brigadier-General Merriam, immediately upon the arrival of the troops, ordered the arrest of every man who was a member of the miners' union, and also of all citizens who were supposed to sympathize with the cause of organized labor.

The action of the military in making arrests has been clearly set forth under the fourth charge. The State authorities in every instance made the arrests, and the military acted simply as guard to prevent escape and suppress riot.

The arrests of members of the miners' union, and the citizens who sympathized with them, were only made where there existed a clearly defined suspicion that the parties were directly or indirectly implicated in the plot which resulted in the blowing up of the mill and the murder of two men. The State authorities were putting forth every effort to give the guilty parties the punishment they richly deserved for the dastardly crimes of the destruction of the mill and foul murder of two fellow-miners.

The action of the State authorities and the military under command of Gen. H. C. Merriam was in no sense a crusade against organized labor, but an effort to punish those guilty of horrible murder and destruction of the mill.

Governor Steunenberg in his testimony declares that he is a member of the typographical union and is in hearty sympathy with the purposes and mission of organized labor.

The arrests of members of the so-called miners' union and the citizens who sympathized with them were instigated and planned by the State authorities, and Governor Steunenberg emphatically avows his sole responsibility in the matter.

There was no enmity against organized labor either on the part of the governor of the State of Idaho or of Gen. H. C. Merriam, but the deepest sympathy and earnest desire to purge organized labor of certain criminals who had for years used the miners' union as a cloak to conceal their dastardly acts. There was no effort to crush labor, nor to interfere with the legitimate organization thereof, but simply to punish those who were criminal and rightly deserved the severest penalties known to the law.

The evidence presented to your committee completely vindicates General Merriam, and shows conclusively that there was no animosity to organized labor on the part of the military in the performance of their duty.

The seventh charge is as follows:

> Whereas it is charged that those citizens were imprisoned in what is known as the "bull pen," a place unfit for human habitation, and that so brutal and degrading was the treatment inflicted on these prisoners by Brigadier-General Merriam and the United States troops under his orders that one unfortunate man became insane, and upon being taken to the county jail he broke from the guards and jumped into the river, and a negro soldier, at the command of the Bunker Hill Mining Company's doctor, fired three shots at him, and he was dragged from the river dead, and that another unfortunate prisoner dying in the "bull pen" begged for a priest and his dying request was denied.

As to the first charge in this "whereas," the committee finds that the prison was not a place "unfit for human habitation." On the contrary, it was a remarkably well conducted and equipped prison, thoroughly adapted and adequate to the purposes for which it was used.

The construction of the prison and the furnishing of it and all other matters looking to the comfort and welfare of the prisoners were entirely under the supervision of the State authorities, who erected and thoroughly equipped a commodious and, under the circumstances, comfortable prison within a period of eighteen days after the first arrests were made.

In reference to the conditions of the prison, General Merriam made the following report to the Adjutant-General of the Army, showing the condition of the prison on May 25, 1899, twenty-two days after the first arrests were made:

> DENVER, COLO., *June 12, 1899.*
>
> ADJUTANT-GENERAL ARMY, *Washington, D. C.:*
>
> Referring to your telegram of this date, when I left Wardner, May 25, I reported sanitary condition of prison as beyond complaint. The main building was provided with comfortable bunks off the ground, with abundance of hay to sleep on, besides their personal blankets and overcoats, heated by stoves, and a large courtyard for exercise. They were, as I thought, more comfortably housed than the troops, and better fed. The seriously ill (only one at that time) was in a hospital in town. A hospital was being constructed near the prison, and bathing and laundry facilities were being introduced into the prison. I gave constant personal attention to these things, but only from motives of humanity, for the responsibility rested on the State authorities, whose prisoners they are, and who always responded to any suggestions I made as fully and as promptly as circumstances would permit. The surgeon employed, who is an old practitioner in these mines, told me the percentage of sick at that time was much smaller than usual among these people, being only 4 out of 330. * * *
>
> MERRIAM, *Brigadier-General.*

In this connection reference is made to the testimony of General Merriam, on page 1805 of the record, which is quoted at length in that part of this report touching upon the third "whereas" of the resolution.

The conditions of the prison are fully covered by the testimony of Capt. Frank Edwards, pages 1890 and 1891 of the record:

> I had visited the prison a few days before assuming command of the camp with Captain Leavell, who had shown me around; and after taking charge I gave it another inspection with a view to seeing if it were possible to carry on improvements that Captain Leavell had instituted.

He further testifies that in order to get an ample supply of water he built a flume, which carried the water to a point near the prison and from there into the prison, furnishing water for all purposes in the prison, including bathing, flushing the sinks, etc. This was done to keep the prison in as healthful a condition as possible. A crematory was established, wherein was destroyed by fire all garbage and sweepings.

The food was prepared by an experienced man.

> The food in the kitchen I inspected every day. I went through the prison at least twice, and sometimes oftener, a day, and found the food to be good and well cooked and plenty of it. Large amounts of unused food would be wasted, such as rice, potatoes, bread, and meat, etc.

On page 1804 Captain Edwards testifies as follows:

> The food was varied and of the usual kind—coffee, tea, fresh meat, bacon, baked beans, potatoes, cabbage, bread, fruit, dried fruit, etc.

He further testifies to the effect that the rations issued to the prisoners were decidedly better than the rations furnished to the soldiers, both in quantity and in quality; that the friends of the prisoners were bringing in luxuries to the men, which were allowed by the warden to go into the prison and were never denied to them except when they were under discipline. There were two stoves in each bunk room.

The committee reports that the charge that the prison was unfit for human habitation has not been sustained in a single particular.

The committee further finds that the brutal and degrading treatment charged as having been inflicted on the prisoners by General Merriam and the troops existed in imagination only, and that proper discipline was exercised and enforced by the officer in charge of the guard of the prison, and that no abuse was practiced by him in his methods of conducting the prison.

The second charge under this seventh "whereas" is that on account of brutal treatment of the prisoners one man became insane, and upon being taken to the county jail he broke from his guards, jumped into the river, and a negro soldier fired three shots at him, and he was dragged from the river dead.

This charge is very skillfully and adroitly drawn.

The committee finds and reports that one of the prisoners was adjudged insane; that his condition was not a result of cruel or inhuman treatment by the troops; that while the county coroner and ex-officio sheriff were conducting him from the prison to the insane asylum the prisoner jumped into the river and was drowned. The details are given in the testimony of Dr. Hugh France, the coronor who had the prisoner in charge. His testimony is found on page 1481 of the record, and is in effect as follows:

> No such thing as cruel, brutal, or inhuman treatment inflicted by the soldiers on the prisoners ever came under my observation. Regarding the insane man, Johnson, he appeared as a witness before the coroner's jury. He answered such questions as were asked him. There was no threatening attitude toward him at all. He gave his evidence in a voluntary way and was not on the stand to exceed ten minutes. Some days later I was notified that this man was acting in a strange manner. I notified the probate judge, whose business it is to inquire into such cases, and he, with two physicians, examined the man and pronounced him insane. After that examination I called at the prison and took Johnson to the railway depot, accompanied by a guard. I left the prisoner on the outside with the guard while I went into the office to buy a ticket to Wallace, where I was taking the prisoner. While I was in buying the ticket the prisoner started to run. I noticed a commotion and ran out, saw the prisoner running toward the river and the guard in close pursuit. The guard dropped on one knee, brought his gun to bear on the prisoner. I called to him at first not to shoot, but there was a general hubbub and uproar of voices, and I did not know whether he heard my order or not; and so, as he did not appear to pay any attention and was getting his gun ready to shoot, I shouted to him a second time, "shoot high." He then shot, and the prisoner kept on running. The prisoner ran on to the bridge which crosses the river and jumped into the river, a swift-running stream. The guard reached the bridge and again fired. I cautioned the guard to shoot high. I

had crossed the bridge and was down on the other side of the bank. When the guard shot I saw the bullet strike the water thirty or forty yards ahead of the prisoner. The man was taken out of the water 200 yards below the bridge, dead. I, together with three other physicians, examined the body and found no mark of a bullet or a bullet wound upon him. The form of insanity was pronounced acute mania with suicidal tendency.

It appeared that this man had been in an insane asylum. The soldiers guarding Johnson did not know of his unfortunate condition, and in firing followed the usual military instructions as to what course to pursue in case of an attempt at escape.

The last charge made under the seventh "whereas" of the resolution is to the effect that the dying request of one of the prisoners for a priest was denied.

No direct testimony was given before the committee that this prisoner, whose name was Mike Devine, ever made any request for a priest or was denied the services of a priest, except by the universal witness, Simpkins, who says:

I asked Captain Leavell for permission for Devine to send for a priest before he died. He says, "Mike Devine or anybody else can't see the priest or anybody else. Those are my orders and they must be strictly obeyed." When I told Mike he could not see the priest he wanted to see Bill Kennedy, his partner, who was in the bull pen, to tell him what he wanted to do with his property. Mr. Coakley, the warden, said he could not let Mr. Kennedy go without permission from the captain. Captain Leavell refused that request.

Dr. France, the county coroner, testifies on this point, page 1483 of the record, as follows:

In regard to Mike Devine being denied a priest, I will say that I visited Mike Devine on the evening prior to his death. I recall an interview in conversation which I had with him, in which I asked him if there was anything he wanted, or anything I could do for him, and he gave me no intimation at that time that he was desirous of having a priest.

In regard to this matter Bartlett Sinclair testified on page 43 as follows:

I am familiar with the facts. I knew Mike Devine quite well. Learning that he was in a critical condition I went to the hospital to see him and said to him "If there is anything you want it will be accorded you." He said he had no friends he cared to see; that the union would take care of him, and that was all he wanted. I asked him if he wanted to see a priest and he said he did not, and used terms of a disparaging nature concerning the priest.

John J. Coakley, the warden of the prison, testified that no request was made through him, or denied by him, for the services of a priest for Mike Devine.

Captain Leavell reported, "No request was made to me for a priest for Devine or any other person."

The committee finds, therefore, and reports that the charge that a dying prisoner was denied his request for a priest is absolutely without foundation.

The eighth charge is as follows:

Whereas the imprisoned citizens were denied opportunity to confer with their counsel or members of their families and were denied the right of speedy and impartial trial; were held in this vile and inhuman imprisonment for several months without charge or indictment against them, although two sessions of the grand jury were held in the meantime, and during their confinement were treated by the offices and soldiers of the United States Army as convicted felons and compelled to work at penal employment; were subjected to cruel and degrading punishments, such as being compelled to sleep on bare boards, placed on a diet of bread and water for ten days, and compelled to stand erect seven hours each day in the hot sun under penalty of death if they attempted to move or sit down (these two latter unlawful punishments were inflicted upon them by the orders of Captain Edwards, United States Army, who amused himself by calling the prisoners "cowardly curs").

This paragraph divides itself into the distinct charges—

That imprisoned citizens were denied the opportunity to confer with their counsel or members of their families;

That they were denied the right of speedy and impartial trial; that they were held in vile and inhuman imprisonment for several months without charge or indictment against them, although two sessions of the grand jury were held in the meantime; and during their confinement were treated by the officers and soldiers of the United States Army as convicted felons and compelled to work at penal employment;

And were subjected to cruel and degrading punishments, such as being compelled to sleep on bare boards, placed on a diet of bread and water for ten days, and compelled to stand erect seven hours each day in the hot sun under penalty of death if they attempted to move or sit down.

It was not proved that any requests made by any persons in confinement to confer with their counsel were denied. The testimony shows that several hundred witnesses were examined before the coroner's inquest held by Dr. Hugh France. None of the witnesses appearing before that jury asked the coroner to be represented by counsel. Counsel preferring such a request were in cases denied. At the time these witnesses were examined no charges had been preferred against them. The coroner's inquest took a broad scope in order to show that the crimes committed on the 29th day of April were the result of a widespread conspiracy. At the direction or suggestion of the attorney-general of the State the coroner declined to allow any attorneys at law to appear before the inquest (p. 1477).

Dr. Hugh France, the coroner, testifies (p. 1598):

> I will say that in the first place I was advised to make this investigation simply by the attorney-general of the State of Idaho, and he also advised me as to admitting or excluding attorneys. He informed me those men were not formally charged with crime, but were appearing there as witnesses to testify as to the death of these men, Schmidt and Cheyne, and as such were not entitled to counsel before this inquest.

J. H. Forney, who was appointed by the attorney-general to assist the State in the prosecution of these cases, testified as follows (pp. 652 and 653):

> These coroners' juries are not courts within the usual acceptation of that term, and they are generally conducted by the coroner. They are ex parte and secret. He alone conducts them, and no one can be present but himself unless by his invitation. They can not try any person.
>
> I advised the coroner that these men that were in the military prison were not charged with any offense under the laws of Idaho and were not held by virtue of any process of the courts of Idaho. There was no accusation before the corner's jury that they had committed any offense. In fact, the corner's jury had no jurisdiction to try any offense. Therefore they were not entitled to counsel. Anybody who deemed himself accused and that he might be entitled to counsel was not entitled to counsel in this matter before a coroner's jury. I advised the coroner, as I stated, that the attorneys for the parties confined in the prison had no right to appear before this coroner's jury whatever.
>
> I will state in that connection that I have been prosecuting attorney in the State of Idaho for a long number of years, and also in the United States court there. For seventeen consecutive years, I guess, I served as district attorney, but in no instance whatever did I permit the attorneys for any party who might deem himself accused to appear before a coroner's jury, as the result of a coroner's inquest is simply advisory. It is not a court by any means.

The coroner, however, cautioned the witnesses testifying before him that they need not give any testimony incriminating themselves, and it does not appear that any witness who appeared before the coroner gave any testimony which in the slightest degree implicated himself, or which was used as a foundation on which to base a prosecution against him.

Whatever evidence these witnesses gave was purely voluntary. It was not shown that there ever was a threat made toward any witness who appeared before the coroner's jury, but that on several occasions witnesses refused to answer questions at all and were excused.

As early as May 21 counsel representing all the men who had been arrested was given free access to them, with full liberty to confer with them, and it is not proven that any constitutional guarantees in this respect have been violated.

On that point Bartlett Sinclair testifies as follows (p. 1638):

> A great many lawyers, I think I can safely say 50, from that section of the Northwest flocked in there the moment they heard of these large arrests, and some of them made very scandalous propositions to me in order to secure these men for clients; all of which, of course, I saw fit to rebuke, and threatened the men, and in that way I got rid of a great many of these hangers-on. Some of them properly representing these men approached me for the purpose of an interview. That was very shortly after I had made a large number of arrests, and in order to facilitate that and at the same time protect the State in its interests, and see that these men did not escape, I required certain conditions to be complied with; and the only one I recognized for a long time, the only man I recognized as an attorney for the men, was Colonel Reddy.
>
> I know that they were never denied consultation with their attorneys if they were willing to comply with those terms. I asked Colonel Reddy whom he represented, and he said all of them.
>
> I had propositions by the dozens made to me by men that they would turn State's evidence if they could be assured of immunity. I warned them not to make any statement to me, but to wait until they had seen their attorneys and consulted with them.

Counsel for the three county commissioners who were deposed applied for permission to see them on the day on which they were summoned to appear before the coroner. At the particular hour at which he asked to see them it was not possible on this account, but it is not denied that he was given ample opportunity to see them that same day.

The testimony of Captain Edwards, U. S. A., on this point is clear and convincing, as appears from the following extract from the records (p. 1902):

> A. I know of no case where an attorney was refused a conference with a prisoner. Mr. Robertson has testified that I refused him permission, but I have no recollection of it.
>
> Mr. ROBERTSON. No; you did let me see them. I do not think that is my testimony. My testimony is this: That I went there and you stated it was not visiting day, and I told you I had to go off on the train, and after some delay you permitted me to see them.
>
> The WITNESS. I had always endeavored——
>
> Mr. ROBERTSON. My testimony I do not think will bear out the statement you have made. I do not want to misrepresent anybody, and I think that would be a misrepresentation.
>
> The WITNESS. I endeavored to be polite to the attorneys that were there; in fact, I would give them the use of my tent or shack for the purpose of holding private conversations with the men in the prison. The sentinel would remain outside the door probably 20 or 30 paces away, out of hearing, and Mr. Robertson and the other attorneys would have their interviews—Colonel Reddy and Mr. Breen, principally.

The following telegraphic correspondence bearing on this point appears in the record and supports the conclusion of this committee that this charge was not proven:

ADJUTANT-GENERAL'S OFFICE, *Washington, June 12, 1899.*

COMMANDING GENERAL, DEPARTMENT OF COLORADO,
Denver, Colo.:

Western Labor Union report that many citizens and miners in the Cœur d'Alene district "have been thrown into a corral like so many cattle for the slaughter and have been denied the right of counsel and the actual necessities of life."

Acting Secretary of War desires statement of facts. Any lack of comfort for these men should be remedied as soon as possible.

H. C. CORBIN, *Adjutant-General.*

WASHINGTON, *June 13, 1899.*

The GOVERNOR OF IDAHO, *Boise, Idaho:*

It has been reported to the President that the prisoners at Wardner have been denied counsel. Please wire the Department if there is any truth in the statement.

G. D. MEIKLEJOHN,
Acting Secretary of War.

BOISE, IDAHO, *June 13, 1899.*

MEIKLEJOHN,
Acting Secretary of War, Washington, D. C.:

Report that prisoners at Wardner have been denied counsel is absolute falsehood. The statement is on par with many others circulated by the imprisoned murderers and the equally guilty associates on the outside.

FRANK STEUNENBERG, *Governor.*

BUTTE, MONT., *September 27, 1899.*

President MCKINLEY, *Washington, D. C.:*

Prisoners in the Wardner "bull pen" held under military authority have been placed on a bread-and-water diet, and their treatment has of late been so brutal that some are contemplating suicide rather than endure such misery. They are even refused permission to consult with their counsel. These men have now been imprisoned for nearly five months, without any charge against them, and demand and sought speedy trial, but were refused by the State court on the ground that that court did not have jurisdiction; and until they can have a trial, we demand for them, in the name of justice and humanity, humane treatment at least.

EDW. BOYCE,
President of Western Federation of Miners.

EXECUTIVE MANSION, *Washington,* ———, *1899.*

SECRETARY OF WAR:

Important. Inquire of governor and military commander. This condition, if true, must be stopped.

W. McK.

WAR DEPARTMENT, *Washington, September 29, 1899.*

Hon. FRANK STEUNENBERG,
Governor of Idaho, Boise, Idaho:

The following communication just received by the President from Edward Boyce, president of the Western Federation of Miners:

"Prisoners in the Wardner 'bull pen' held under military authority have been placed on a bread-and-water diet, and their treatment has of late been so brutal that some are contemplating suicide rather than longer endure such misery. They are even refused permission to consult with their counsel. These men have now been imprisoned for nearly five months without any charge against them, and demand and sought speedy trial, but were refused by the State court on the ground that that court did not have jurisdiction; and until they can have a trial we demand for them, in the name of justice and humanity, humane treatment at least."

I should be glad for any information which you deem proper to answer this question.

ELIHU ROOT, *Secretary of War.*

BOISE, IDAHO, *September 30, 1899.*

ELIHU ROOT,
Secretary of War, Washington, D. C.:

Ed. Boyce communication to President is base falsehood in every particular. Letter follows.

STEUNENBERG, *Governor.*

General Merriam was called on for information in response to the same complaint. He answered as follows:

WAR DEPARTMENT,
Washington, September 29, 1899.

Brig. Gen. H. C. MERRIAM, *Denver, Colo.:*

The following communication just received by the President from Edward Boyce, president of the Western Federation of Miners:

"Prisoners in the Wardner 'bull pen' held under military authority have been placed on a bread-and-water diet, and their treatment has of late been so brutal that some are contemplating suicide rather than longer endure such misery. They are even refused permission to consult with their counsel. These men have now been imprisoned for nearly five months without any charge against them, and demand and sought speedy trial, but were refused by the State court on the ground that that court did not have jurisdiction, and until they can have a trial we demand for them, in the name of justice and humanity, humane treatment at least."

I should be glad for any information which you deem proper to answer this question.

H. C. CORBIN, *Adjutant-General.*

DENVER, COLO., *September 30, 1899.*

Adjutant-General CORBIN, *Washington, D. C.:*

I have called upon commanding officer Wardner for complete report by wire.

MERRIAM, *Brigadier-General.*

DENVER, COLO., *October 1, 1899.*

Adjutant-General CORBIN, *Washington, D. C.:*

Following telegram just received from Captain Edwards, commanding troops at Wardner, Idaho:

Gen. H. C. MERRIAM, *Denver, Colo.:*

On September 20 it was discovered that the prisoners were digging a tunnel through which to escape. The next morning five of them were detailed to dig it out and fill it in. They positively refused to do as ordered and were sustained by every man in prison, all refusing to obey my personal orders. I directed that all except the sick and attendants be put on bread and water for eight days unless coming under prison discipline sooner. This has been carried out. They were kept outside the prison on the first day for about six hours while the building was being inspected, which has caused the false statement to be made that they were kept out every day.

The hay for bedding was removed for sanitary reasons and was not replaced while under discipline. They are still insubordinate and refuse to work out the two days' punishment awarded by me, but are on full rations. They are not allowed visitors or luxuries sent in by outsiders. Colonel Reddy telegraphed asking if he could interview his clients held under Federal authority and was informed that he could if he was their attorney. Peter Breen applied to see them and the United States district attorney was telephoned to and he replied that only Reddy was recognized as their attorney. Breen is under suspicion of having had something to do with the escape carried out by Crawford. No duly recognized counsel has been or will be denied interviews with the prisoners. Those now in confinement are, as a rule, the worst element and will hesitate at nothing to effect their escape. No trials were had at the last term of State court for the reason, as I understand it, that the prosecution was not prepared owing to the escape of the seven indicted for murder, whose cases had been prepared during the recess. Thirty-six are to be tried in October before the United States court at Moscow.

EDWARDS, *Captain, Commanding.*

Under direction of the governor two days of each week were set apart as visiting days, in which the families and friends of imprisoned men were granted every facility to see and to converse with them. This was after the new prison was in running order. Before that the prisoners' families would call at almost any time. Seats were furnished on which the women could sit and meet relatives and others they desired to see, but most of the visitors talked to the men through the wire fence surrounding the place of confinement within the outside inclosure.

Bartlett Sinclair testifies on this point as follows (pp. 1648 and 1667):

Q. While the prisoners were confined in these prisons, what is the fact about the privileges given their friends and relatives to call to see them or inquire about their condition, etc.?—A. My instructions were to apply the same rules that were applied in our State prison—to have certain days when these men could receive visitors; and those rules were carried out. There was a bench and a shelter where conversation could be carried on; and it is not true that they were compelled at all times to conduct their conversation through this barbed-wire fence. There were times when that was done, but there was no occasion for it. They could either carry on their conversation through this wire fence, or, if they cared to delay and take their turn, they could hold their conservation under a shed, a lean-to, which was constructed very near the pen, for a suitable place for an audience.

Captain Bennett, U. S. A., testifies on the same point as follows (p. 1798):

Q. What do you know, if anything, with reference to preventing communication between prisoners and outside parties?—A. When they were in the old prison, I saw large numbers of prisoners—that is, at different times—standing by the fence talking to persons on the outside. There were sentries on the outside of the fence, and then they also had soldiers in the inclosure, but necessarily up against the fence. In the new prison, until about the day before I left, I think until the 24th of May, persons were allowed to go down to see the prisoners at any time of the day. The only thing required of them was to obtain a pass from the commanding officer of the guard, the officer of the guard, or sergeant of the guard, to permit these persons to see the prisoners. These outsiders were not permitted to go inside of the prison proper; that is, inside of the building.

Q. This quadrangle, you mean?—A. Yes; inside the building; but I have seen friends numerous times inside of the wire inclosure talking to prisoners.

Q. Were these guards in the immediate presence of the prisoners and those talking to them?—A. No soldiers.

Captain Edwards, U. S. A., speaks to the same effect (p. 1892):

Q. It has been testified that the prisoners at times were allowed to see their friends; that their friends were allowed to come up to the wire fence. In such cases were the prisoners allowed to meet the friends who had called to see them; were the prisoners called out?—A. The prisoners were called out, but the visitors would first apply to the warden at his office at this building [indicating], and on the east side of the warden's office, toward that barbed-wire fence, there was a roofed porch. Sometimes they sat there; but as a rule they saw their friends at this space between the warden's office and the storehouse, the prisoners remaining on one side of the barbed-wire fence and their friends on the other side.

He further says (p. 1902):

The prisoners were permitted to see them (their friends) except during the time when disciplined—when they were under discipline; but that was a matter arranged by the warden.

Permission was given for these interviews at other than the stated periods, and it does not appear that any such reasonable request was ever refused, and the soldiers did not in any way exercise surveillance over or attempt to hear these interviews.

These men were not denied the right of speedy and impartial trial. The riot occurred on April 29. The coroner's jury convened on May 3, 1899, and was in session until July 25, 1899, and examined nearly 500 witnesses. The grand jury met June 12, and after being in session five days reported over 400 indictments. On July 18 the trial of Paul Corcoran was begun before a special term of court. He was convicted July 28 of the murder of James Cheyne and was sentenced to seventeen years' imprisonment. As illustrating the difficulties with which the prosecution labored in this case, it may be stated that though Corcoran was positively identified as one of the masked men who took part in the murders and arson committed that 29th day of April, so closely allied and confederated are the members of the organizations who participated in those crimes, there were found numerous witnesses who were willing to forswear themselves by declaring that he was at that particular hour miles away from the scene of the atrocities. At the conclusion of the Corcoran trial the court, on account of other engagements, was compelled to leave Shoshone County, and the State began preparation for the trial of seven other men charged with complicity in the same crimes. On August 28, only a few days before the time set for the trial to begin, these men, through the treachery of a noncommissioned officer in the Army, who was bribed by persons unknown, effected their escape from the prison. The State was not at that time prepared to proceed with other trials. In September 13 of the persons arrested were tried and convicted before the United States courts at Moscow for interfering with a United States mail train. By the end of October every prisoner under guard of the troops had been released from their custody, and the stockade was torn down and has not since been used. Some 100 men indicted for complicity in the crimes of April 29 are now out on bail. Some 300 others are fugitives from justice and have not yet been apprehended.

Bartlett Sinclair explains why there have not been more trials of these imprisoned men (p. 1767):

> The explanation of that is this: That there are, after a very careful investigation by the legal authorities of the State, perhaps 400, not more than 500, available jurors to try any cases growing out of the Cœur d'Alene riots in that county, and of those men fully nine-tenths, and perhaps ninety-nine one-hundredths of them, live south, in the farming districts; that is called the neutral group, the neutral people. We were in hopes we would recapture those men that had escaped and were indicted for murder and dispose of their cases. If that is found to be impossible, then the smaller crimes will be taken up and tried as speedily as we can. Every opportunity has been made to capture those men. They are supposed to be in hiding in the mountains, where the snow is 10, 15, or 20 feet deep.

It does not appear from the testimony that any of these prisoners under indictment, who are under bond, have asked for a trial; and so far from it appearing that speedy and impartial trial has been denied, the opposite is plainly shown to be the case. The Corcoran case was forced to trial against the will of his counsel, and the attorneys for the men who escaped from prison were prepared to oppose their speedy trial.

From the state of turbulence and riot which permeated that community for seven years it was evident that drastic measures were needed to deal with this murderous outbreak. Wholesale arrests were necessary and justifiable. Had the usual processes of affidavit and warrant of the civil law been resorted to, most of the guilty must have escaped. As it was it is known that many of the ringleaders took warning and fled. Though every effort has been made to apprehend the men who escaped from the jail by bribery, no trace has been found of them. The governor realized from the start that some innocent persons might be seized with the guilty, and he at once took steps to release those against whom there was no incriminating proof. These measures proceeded with expedition and men were released from confinement almost daily (p. 1836).

Bartlett Sinclair testifies (p. 1641) that when information was brought to him that there was no evidence against prisoners incarcerated in the prison they were released. He further says that he notified their friends on the outside and urged them to get all the affidavits they could, where they claimed to be innocent; but a great many of the prisoners admitted to him that they came down with the stolen train. Those who were innocent, those about whom there was the remotest reason for believing they could not be convicted, were released.

Frederick Oscar Martin testifies:

> They used to release so many men every day from the bull pen until Corcoran was sentenced. After that they quit releasing men altogether.

This last statement of Martin's is shown by the records to be untrue.

The governor is convinced that those he detained any length of time were connected with the crimes of April 29.

So far from the imprisonment of these men being vile and inhuman, the conditions of the prisoners confined in the new prison seem to have been as comfortable and easy as it was possible to devise in any hastily improvised place of imprisonment. So satisfactory were the conditions prevailing there that the miners and their friends did not desire the Industrial Commission to visit the prison in the latter part of July. The men who escaped from prison August 25 were in this place of confinement instead of the county jail, because of their own expressed preferences, owing to the unsanitary condition of the jail (p. 656). To be sure, the warehouse and cars first used as a place of confinement did not furnish all the accommodations of an established prison. In the nature of things this could not be avoided. A large number of men had been arrested by the governor within a brief space of time. It does not appear that the governor did not do the very best he could do to remedy the inconvenience and discomfort that first existed. It is certain that no blame attaches to the United States Army for this condition of affairs. It appears, even, that General Merriam telegraphed to the governor urging greater expedition in preparing the new prison for the detention of prisoners. The telegram follows:

> WARDNER, *May 11, 1899.*
>
> Governor STEUNENBERG, *Boise, Idaho:*
>
> I am still holding nearly 500 prisoners in a barn and box cars. All are very uncomfortable and with unsanitary conditions which will soon become intolerable. Something must be done to hurry preliminary examination and release of those not prima facie guilty. It is impracticable to make this large number of prisoners reasonably comfortable here without considerable time and expense. Can you not personally inspect the situation at once and bring help?
>
> MERRIAM, *Brigadier-General.*

In response to this telegram Governor Steunenberg came to Wardner, as is shown by the following extract from the report of the Secretary of War (p. 34):

> To this the governor replied that he would start for Wardner at once, and from his arrival on the following day every possible and needful effort was made to meet the requirements of the situation in all respects.

In view of the large number of men confined it was absolutely necessary to use the most stringent sanitary measures to preserve the health of the prisoners and prevent the outbreak of disease and epidemic. It was necessary to thoroughly police the quarters and grounds, to carry water, collect and remove garbage and débris, serve the meals, and wash the dishes. The State furnished no extra help for this purpose and the work was done by the prisoners. It was impossible for the State to employ labor to complete the new prison as quickly as General Merriam thought was necessary under the circumstances. Some of the prisoners were detailed to assist in this labor. There was no proof that they were called on to perform any labor or other service which was not absolutely necessary for their own comfort and convenience.

Some extracts from the testimony on this point are herewith submitted:

Fred'k Oscar Martin testified:

> We were forced every morning to get up at 6 o'clock. A colored sergeant or colonel came in and called us, and said he wanted a crowd to go up on the hill to help the carpenters up there, and he called a crowd of twelve or sixteen every morning to help to build the new bull pen. If they did not get up, they would punish the men to make them get up.

As this was the hour of reveille for the soldiers, it was no hardship to compel the prisoners to get up at the same hour.

> Some kind of work we were required to do in the bull pen was necessary for the proper policing of the camp. Sweeping out, but not digging ditches. The ditches were dug to lay water pipes to carry the water from the kitchen, the refuse, etc.

The ditches to carry away refuse and dirty water from the kitchen were much more necessary for the health of the prisoners than was sweeping.

> I did not feel well enough to do any manual labor, but I was perfectly willing to do my regular share of the work, and I believe everybody else was, and so told Captain Edwards.

Andrew J. Devlin testified:

> I understand that the ditch that was dug was for the purpose of bringing water down to the bull pen for the use of the men, but I could not see any real necessity of having that ditch dug at that time.

It was dug to furnish the prisoners with an abundant supply of good fresh water, than which nothing was more necessary.

George Cornell testified:

> I saw a man, because he had refused to work, stood up all day, and I think all the next day, and I think the third day. He would not give in and they finally grew tired and let him go back in.

This was the incident referred to by Frederick Oscar Martin.

> Charlie Burroughs had to stand up for quite a number of days, with a soldier watching him all the time, for refusing to work. Mr. Burroughs is now in San Quentin Penitentiary for interfering with United States mail.

These matters were explained by Captain Edwards in his testimony (pp. 1899, 1901).

Martin testified further:

> I remember several cases where the men in the bull pen had an argument with the cook and the cook would call the corporal on guard and take the men outside and put them in the guardhouse. Joe Summers was put in the guardhouse repeatedly for refusing to work; in fact, he never did work.

It was not proved that any of the measures taken to preserve prison discipline were unnecessary or too severe. Martin was one of the mob of April 29, 1899, and admitted that he wore that day the guilty white badge signifying participation in its atrocities.

> Hogan and Brower were stabbed with bayonets. Before Captain Edwards came, whenever anybody wanted any work done, either the sergeant, corporal, or a private came in the courtyard and ordered anybody to do it. The men would sometimes be called to go out and work three or four times a day, and these two men had been doing some work that day, and they were again asked and they refused, and a colored soldier put a bayonet at them and hit them—that is, hit Hogan. Brower jumped out of the way. Hogan complained to Lieutenant Jackson, of the Twenty-fourth Infantry, and showed where the soldier had stabbed him. Jackson says, "It served you right if you don't want to work."

The preponderance of the testimony satisfies the committee that the incidents herein referred to never took place.

Only three deaths took place in the prison during its maintenance. This is proved to be an exceedingly low death rate for the number of persons confined there, and this fact of itself speaks volumes for the splendid management of the prison, and is ample refutation of all the charges preferred against General Merriam and his subordinates.

Captain Edwards, U. S. A., who succeeded Captain Leavell in actual command of the camp, speaks as follows concerning the conditions he found there and what he deemed necessary to be done for the comfort and health of the prisoners (pp. 1890 and 1891):

> It was evident to me that he had been doing all in his power to make those men in the prison as comfortable as possible with the means at his disposal. I saw that some things were necessary, and I spoke to Mr. Sinclair about them, and he said that anything that I recommended would be carried out. The first was the matter of bringing water in there. Originally they had taken the water from a small tank which was supplied by a small spring, and it was evident at that time that there would not be a supply great enough for the whole camp and prison, particularly when the weather got warmer, and I had built a box flume from Slaughterhouse Gulch, as it is called, which carried the water to a tank on the hill right back of the prison, and from there it was brought into the prison and camp with a 2-inch service pipe, the service pipe terminating at the water-closet, or sinks, as we call them, where the sinks could be flushed. At first they had the ordinary cesspool water-closets, which are used ordinarily for camp purposes; but I recommended that that be changed, so as to have a place where they could be flushed. From that we had put in a 6-inch tile drain sewer to the river to carry off offal and slop water and things of that kind.
>
> I also had built a crematory, where all the refuse matter possible was burned. The arrangements had been made with some farmer, I think, or some man, to carry away the slops. I mention these things to show that the desire was to keep the prison in as healthful a condition as it was possible under the circumstances. We had a plentiful supply of water. Sewerage was good, and the place was kept as clean as it was possible to keep such a place. The prisoners were all put on a roster and the work was divided up among them, so that each man would do as far as possible the same amount of work as his neighbor.
>
> The detail was made every evening for the next day's work. Some of the men went on what we call, in military language, kitchen police—that is, they worked in the kitchen to assist the hired cooks in dish washing and preparing vegetables and things of that kind—and the other men were on outside work, as it is called. The outside men were put under the charge of a noncommissioned officer, the idea of that

being so that he could show them how to clean up and police the grounds. He would take those men, and one would go to the crematory to prepare the fire, to keep it burning, and the others would go through the bunk rooms and prison yards with stable brooms to sweep up and clean up, and the refuse was taken out and burned. That was done twice a day.

No doubt while eating the men would be careless and the food would be scattered; yet, after dinner, as far as possible, that was all cleaned up. The hospital, as has been testified to, was in a wooden building and with a tent annexed. Both were used at first, but very soon we had so few sick that the hospital could be moved to a room inside the prison building. From the time I took charge, including the month I was not responsible, we had lost one man by death—Donaldson, who died of typhoid fever. Even the sick rate was reduced considerably. There were two or three men that were sick when I first went there, quite sick, but they gradually improved. One man—I can not remember his name—appeared to be sick with consumption. He got along very well. He received good treatment. The doctor employed by the State paid attention to the sick. Sometimes when he was not available, if a man needed a doctor, I would send my camp doctor if somebody had to be attended to immediately. From constant observation, because I was in the prison almost twice a day, and often there more than that, the attendants were very kind and devoted to the sick men, particularly the cook—a Frenchman who was there—who would do everything he could for the men in getting up little things for them. He had the run of the kitchen and the storehouse where he could get eggs and milk and things of that kind.

He says, on page 1910:

The regular detail for work was made from the roster in the evening and published on the bulletin board inside the prison door, showing the names of the men who were for kitchen police, or for outside work, or for extra fatigue punishment work. The largest average number detailed for outside work was six, if I recollect, and it was finally reduced to three. If I recollect, the largest number for kitchen work was about ten, possibly twelve.

Page 1925:

The men were helping to complete the waterway, carrying lumber up to fill the tank, and I think possibly some of the stumps were taken out near the warden's office.

Page 1940:

That has always been the case in every institution of that kind—that the improvements are made, as a rule, by the men themselves, as far as the rough work can be done. It was absolutely necessary to complete this water service as soon as possible, and I utilized every person that I could. If I had considered it penal work I would have simply detailed 25 men to have gone out there, men who had not become insubordinate in any way; but as long as those men were under prison discipline and had work to do, I deemed it best to place them at some work that would be of benefit to them collectively.

Capt. B. W. Leavell, U. S. A., who was in command of the prison part of the time, is now very sick in the hospital at Fort Bayard, N. Mex. The following official report prepared by him directly denies many of the charges contained in the resolution.

UNITED STATES GENERAL HOSPITAL,
Fort Bayard, N. Mex., February 17, 1900.

Gen. H. C. MERRIAM, *United States Army.*

SIR: I have the honor to make the following report concerning alleged occurrences at Camp Wardner, Idaho, while I was in command of the troops and in charge of the prisoners confined in the prison there:

In the first place, I was in command of this camp from about May 10 till about June 21, 1899.

During the whole of this period the prisoners, their families, and friends had free access to me at all times.

After the completion of the prison, when all prisoners had been transferred thereto, two visiting days per week were designated, but no person coming from any other place than Wardner or Kellogg was refused access to prisoners even on other days.

The only complaint I remember having been made to me by any member of a prisoner's family was that of the mother and sister of a man who was in the hospital. I found, in conversation with the prison surgeon, that this son and brother was not dangerously sick; that he did not want to see these women; that their presence aggravated him; and that their presence in the hospital disturbed the other patients. While I allowed them to visit the hospital when the surgeon recommended it, I refused them access to the hospital at other times.

At no time could I find any creditable testimony of any prisoner having been stabbed or even pricked with bayonets.

Only one such complaint was made to me, and, though many persons were supposed to have been present, it was not substantiated.

A cot was taken into the prison without my knowledge, for Mr. Stewart, of the Mullan Mirror. When I discovered it I said that I was tempted to have it removed, because other prisoners might claim that a distinction was made between them in allowing an editor comforts which others did not have. There was no threat made, nor was any necessary.

No report was made to me of any prisoners being knocked down with muskets, nor of any being bayoneted out of their beds.

No prisoner was kept in the box cars from 6 p. m. till 2 p. m. the next day without food, nor denied the privilege of attending calls of nature; at least, no such things were reported to me. No request was made to me for a priest for Devine nor for any other prisoners.

The priest visited me and with me visited the hospital. We had several long conversations about the prisoners and on other topics.

He told me that complaint had been made because members of the Roman Catholic Church had been allowed to lie in camp without the presence of a priest.

It was arranged between us that when I knew that a member of his church in the prison was dangerously ill I was to telephone him at the Sisters' Hospital, at Wallace.

Never, to my knowledge, was a prisoner denied the privilege of attending to calls of nature, and at a place prepared for that purpose; nor at any time were any cruelties or outrages perpetrated upon any prisoners or their families.

The families of the prisoners so freely availed themselves of the privilege of visiting me that I am satisfied there was never any foundation for such accusations.

The prisoners themselves frequently told me they had no objection to the soldiers, but they did not want to be sent out with the deputies.

Should affidavits be desired upon any or all of the points covered in this report, I shall gladly furnish them.

I only regret that my physical condition precludes the possibility of my giving oral testimony before the Congressional committee.

I am, sir, very respectfully, your obedient servant,

B. W. LEAVELL,
Captain, Twenty-fourth Infantry.

The charge of being compelled to sleep on bare boards, placed on a diet of bread and water for ten days, compelled to stand erect seven hours each day, under penalty of death if they attempted to move or sit down, and the facts upon which this charge is based are so fully explained by Captain Edwards, U. S. A., in his testimony that the committee cites from it at length (pp. 1895, 1896, 1897):

> In the afternoon of September 20 it was discovered that the prisoners were attempting to complete a tunnel which lay from near the northeast corner of the prison in a northerly direction, and had reached about that point [indicating on the map] near the camp exchange building. Some soldiers were sitting on the ground near one corner of the camp exchange, and they saw a little stick wiggling up through the ground, probably as large as my little finger, and they were a little surprised, naturally, at seeing anything like that coming out, and they imagined that the steward of the exchange was playing a joke on them; but he assured them he was not, and then one of the men started to catch hold of it, but it was pulled away from his hand down into the ground. Naturally they were still more suspicious, and they came up and reported to me this peculiar condition, and I sent for some men with picks and shovels, and about 4 feet down we opened into this little tunnel that had been constructed. One of the soldiers volunteered to see where it led, and we discovered it came out inside the prison room.
>
> A few days before I had taken all of the bunks out of the north bunk room for the purpose of giving the men a room to sit in, and also a dining room; but as soon as the sitting room was boarded up they took advantage of that to put their refuse from the tunnel in there. They made that sort of a dump. That afternoon five names

were included in the detail for extra work the next day, the orders being for those five men to dig out and fill in the tunnel. They were brought out, and Simpkins asked what they were expected to do. I said they were expected to fill in that tunnel. He said they would not do it. Four of the men absolutely refused. One of them, a man named Anderson—I forget his first name—started to work and continued working for a few minutes, until he got some signals from this man Simpkins, and he put down his shovel and said, "Captain, I can not work." And that is the time I told him to face about. I have no recollection of cursing him, because I would not do that to a man. I have no recollection of it. But I did tell him to face about. And then the warden would bring out men in parties of five, and they all refused to work, some expressing a willingness to do anything I told them if the others would work, and invariably I would tell them, "You stand on your own feet; I am only asking you whether you want to work." Some complained that they were sick. Right at the corner of the prison, the northwest corner, I had the doctor. I sent for him, and as soon as a man reported he was sick I sent him to the doctor to be examined.

In a number of cases the doctor did excuse men; decided they were not able to work. Others he said were shamming, and were able to work. The latter would be sent back to where they were held on the space on the north side of the prison, between that and the barbed-wire fence. In this way all of the men were brought out. The only men who were not put to work were the hospital men; the attendants in the hospital. Then I directed that the bunk rooms, the two bunk rooms then occupied, should be searched for anything that might be concealed, and while that was being done the men were kept outside of the prison where they were first placed. The keeping of the men there was not intended as a punishment. They were held there, as they had to be held in some place while the bunk rooms were being searched, and to search the buildings it was necessary to first take out the hay and then remove the boards, so as to get under the bunks. In that examination we found all sorts of things—crowbars, hammers, saws, hatchets, knives, forks, spoons, a variety of things that had been stowed away and had been stolen from the workroom and the kitchen. As soon as the eastern bunk house had been inspected and the boards put back the men belonging to the bunk house came in, possibly about 4 o'clock. They first went out about 9 something, but during all that time the employees were at work in inspecting the new bunk houses. As the men were brought in they were required to give up their knives that had been given back to them by me—well, they had asked for them, but I found that they were not to be trusted with them.

Previous to that, after the men were all out, I went out again to them, because ordinarily they had been got under discipline in anything I told them to do, and I went out again to them in hopes that some of them would break away from the advice that had been given them. I said again, "Men, I want to know if any of you men will go to work." It was then as I turned to go away that someone made some remark which appeared to me as though they were cursing me and using some vulgar and profane language. I could not distinguish who the man was or what exactly it was he said, but I turned quickly and said: "What was that? Repeat that!" or something of that kind, and then I said, "You can not speak or do anything to a man's face and you who say that are cowardly curs, and you do it behind a man's back"—referring to that man.

I am quite convinced that some man did say something that was insulting, and to him alone was my remark addressed, because in that quantity of prisoners there were any quantity of men who had been subordinate and obedient to everything desired of them, and I would not think of them all in that way. The hay was taken out and was not returned to them for five or six days, while they were under discipline. They were kept on bread and water, and I awarded a punishment for insubordination—a refusal to obey the proper order—eight days on bread and water and two days' extra fatigue. That is a military term. They well knew that they could get off of the bread and water the minute that they became subordinate. They continued, however, and would not work, and they were there eight days on bread and water. The authority for such punishment is contained in General Orders, No. 55, A. G. O., 1895:

"A prisoner who violates any of these rules, is insolent, insubordinate, disrespectful, impertinent, disorderly, uses indecent or profane language, who escapes or attempts to escape, will be punished at the discretion of the commanding officer as the gravity of the case may demand by (*a*) being deprived of a meal; (*b*) being locked in his cell when not at work; (*c*) forfeiture of good-conduct time previously earned; (*d*) performing extra hard or disagreeable labor; (*e*) performing extra hours of such labor; (*f*) solitary confinement on bread-and-water diet.

"Such solitary confinement on bread and water will not exceed fourteen consecutive days at any one period, and will not be repeated until an interval of fourteen days shall have elapsed."

These men understood, without a doubt, that they would have their regular diet restored at any time they agreed to work.

Q. Was this so-called standing line maintained more than one day when you were inspecting the bunks?—A. It was never intended as a standing line. It was put there while the inspection was going on.

Q. It was called that in the evidence.—A. Yes; and, as has been testified, I told the sentinel in front of the line there that if any man attempted to leave that place to shoot him. I gave that order; that if they attempted to leave he was to shoot, and they so understood it. There were no extra sentinels put on there, but simply the usual number, three, were on their posts, and were relieved at the usual time, every two hours.

(Pp. 1938 and 1939):

Q. Now, Captain, suppose the soldiers who were in charge of those men interpreted that order to mean that those men should not leave that line at all. Did you explain your order to them, so that they would know that the men did have the right to get back in the shade against the house?—A. A soldier understands his orders, Mr. Robertson. When you give an order to a soldier, you do not have to give him a diagram. He knows what it is. He understands those things. In fact, the men did go back into the shade, and the men were taken to the sink, and the men went to get water, and all those sort of things. They were simply held there pending the examination of the bunk rooms. They were kept standing while I was out there, while this matter was under my direct supervision.

Q. The testimony is that those men were compelled to get out of that shade.—A. I know nothing of that.

(Pp. 1898 and 1899:)

A. The prisoners slept on boards during the five or six days of their disciplinary punishment. I can not recall the exact number, but it was a day or two less than the bread and water. They were on bread and water for eight days; that is, they had their full breakfast this morning, and they commenced in the afternoon, and that counted as a half day, and a half day of the eighth day. It is spoken of by some of the men as nine days. It was simply on nine numeral days, but the actual number was eight days. That was the order, and then they went on full diet. Of course there is no truth at all in the statement of standing for seven hours a day for ten days in the hot sun. It was only one day.

Q. It is a fact, then, that the men could have sat down and did sit down?—A. Yes.

Q. You said a moment ago that you did give an order for any man that attempted to move?—A. To leave; that is, to escape.

Q. I understand.—A. Understand, there were one hundred and fifty-odd men in the place, with simply this barbed-wire fence, and, there is no doubt about it, they were very much disappointed at the fact of the tunnel having been discovered, and possibly their irritation was due to the fact of that discovery, and it was evident that they had been ill advised and were liable to do something that was indiscreet. I might say that they appreciated the absurdity of their act at that time, from the fact that when the second tunnel was discovered that was filled up in two hours and turned off as a joke. I do not know whether it has been testified to, but they attempted a second tunnel, and when that was discovered there was no trouble at all about filling it up.

(Pp. 1899 and 1900:)

Q. Were any punishments of this character inflicted prior to that date?—A. Of bread and water?

Q. Of bread and water.—A. There were quite a number of disciplinary punishments of the men in the course of the ordinary violation of prison rules. For instance, the destruction of food, where men would come and take a plateful of fresh food and go and throw it right into the swill barrel, where they would be caught in the act; where men would destroy the walls by cutting holes in them; where they were insulting to the prison officials; in one or two cases where they refused to work.

At the time of the vaccination the men were ordered out to be examined for vaccination, with the understanding that they were not obliged to be vaccinated. The only point was, I wanted every man to be examined and given the opportunity of being vaccinated. The word was passed through the prison and quite a number came out, in bunches of ten, to go to the doctor. The warden kept an account, and it was developed that some fifteen or twenty of the men did not come out at all.

They were checked up on his book, and then I went in again personally and announced in all the bunk rooms that the men that had not been examined must come out at once so they could all hear it. These men did not come. Having this list, we found who they were, and they got a punishment—an extra fatigue, I think. This Joe Hasset—I think that was his name—was arrested by the officer of the day for not removing a lot of hay from the vicinity of a fire that was burning terrifically in the prison. My greatest fear was that the building would be set afire from the inside, and in the excitement a possible attempt to escape would be undertaken.

The sentinels around the prison were given particular orders in regard to the alarm of fire. On this night the sparks were coming out of the iron smoke pipe—it was simply an iron pipe—in great volumes, and the officer of the day went down there and went into the prison, and this man was near the stove, and a lot of this trash was around the stove, and the officer gave him an order to remove the trash from the vicinity of the stove, and the man would not obey it; he disobeyed the officer's orders, and the officer confined him. All punishments of that description were brought to me and were awarded entirely by me. No man was put in the guardhouse except by my authority.

(P. 1900):

Q. Excepting these special cases or in those punishments that were administered, there was no general punishment of that kind, as the resolutions would seem to imply?—A. No; the only trouble I had with the men there was on the occasion of the discovery of this tunnel. Shortly after this trouble there, one of their lawyers, Colonel Reddy, came up and he said he wanted to know about it; that a great many rumors had come to them, and he said, "I don't think you will have any more trouble about it." He had been talking with Heney before that. I said, "Colonel Reddy, they are still insubordinate; they are not on bread and water, because the eight days have expired, but they are still insubordinate." The colonel said, "Well, if I can see Heney again I think there will be no trouble." I said, "Certainly, you can see him," and he was brought out, and he had an interview with Colonel Reddy, and then the Colonel returned to my shack and said, "I think it will be all right."

That afternoon one of the men—I do not remember who it was—came out to me and said, "Captain, we are ready to obey orders." I said, "All right; go back to your old positions; go back and get those boxes of tobacco that are waiting there and take them in." That reminds me, it was refused them—the tobacco that had been sent to them in quantities, and also fruit sent in quantities. I sent word to this man—Carter, I think his name was—to go and take the fruit away; that it could not go in while the prisoners were under discipline, nor could tobacco go in in quantities—that is, cases; but any man who wanted to buy tobacco for his individual use could do so, and did buy it. I saw a number of cases where deputies would buy tobacco, as has been testified, and the soldiers would buy it. The idea was that I would not allow donations to be made; but the minute they became subordinate I told them they could have the tobacco, and there never was a word said after that between us.

Q. Did they fill in these tunnels?—A. Yes, sir.

Q. They went to work after Colonel Reddy told you that?—A. They went to work without any trouble. I caused to be dug around the bull pen a ditch, which has been spoken of here. The object of that ditch was to crosscut with any other tunnel that might possibly be under the course of construction at that time, and also to render it a little more difficult to construct any tunnels in the future, if they intended to attempt it.

(P. 1901):

Q. There was something said in the testimony about Mr. Heney being refused release from the prison. I wish you would state——

The CHAIRMAN. That is after the civil authorities?—A. Mr. Heney was released by Mr. Sinclair, as has been testified, and I said to him, "Now, are you ready to carry out the military orders for insubordination?" and he was not prepared at first; but within a few days he was. I do not know how long he worked. It was part of two days. As soon as he showed his inclination to obey the military punishment, that was all I wanted.

Q. He was released as soon as he had done that?—A. Yes.

Q. There has been something said about the prisoners being required to work outside of the prison yard and fence on some private property. Will you state what the facts are in regard to that?—A. No prisoners were outside the prison fence, except under disciplinary punishment, and then only for the benefit of the prison. The flume and the tank were built by civilian employees outside the prison, and the prisoners carried some of the planks up the hill to the tank. They also dug some of the ditch where the pipe was laid, but all that work that was outside, whatever it was, was on account of punishments. But three or four men that had whisky inside were punished in that way. They were given some extra fatigue.

A man named Burrows—he absolutely refused to work at first. He wanted the men in the prison to do the work for him. He wanted to go in the guardhouse, and he said, "Put me in solitary confinement." I said, "No; I won't put you in solitary confinement; you can come here where I want you to work." And I took him to a sentinel and gave him a shovel and told him I wanted him to fill in that sink hole there. He said he could not do it. I told him to stand there until he thought he could do it. At the end of the first day he did not do it, and at the end of the second day he had not done it, and he told me he had taken an oath not to work. I told him it was a bad thing to take such an oath; that sometimes such an oath would have to be changed. Finally he told me, at the end of the third day, he was ready to work, and after that Burrows was one of the model prisoners; I never had any more trouble with him at all.

Maj. Allen Smith, U. S. A., who was in command of the camp at that time, testifies that Captain Edwards telephoned him about the prisoners tunneling out, and what steps he had taken to make them fill in the tunnel; and that he acquiesced in all that he did, and considered it proper and legitimate prison discipline. He considered it proper management, and that the punishment inflicted by Captain Edwards was necessary for the care and convenience of the prisoners. He says that he would have done precisely what Captain Edwards did if he had been in immediate command at the prison (p. 1956).

General Merriam testifies (p. 1817):

> That punishment was inflicted upon prisoners for violation of orders and rules of the prison and attempts to escape; and that the punishment as above set forth was entirely within the rules for the government of military prisons.

He declares further (p. 1812):

> I know that in accordance with all rules of military prisons the prisoners were required to do the policing and the cleaning of the grounds in and about the prison. I know, also, that some of the prisoners were used by the authorities of the State in the erection of the new prison, in connection with carpenters.

As to that matter, however, neither he nor his soldiers had anything whatever to do. That the prisoners were willing to assist in this work in order to get out of the old prison into more commodious quarters, is testified to by Conner Malott (p. 1369):

> Prisoners also worked at the building of the bull pen, but to my knowledge they were not put to work at that. My understanding, gained from talks with the prisoners, was, that they rather wanted to get out of the old prison and get to work on the new bull pen.

There was some testimony that when the tunnel was discovered the men were called out from their bunks and asked to fill it in; that they were lined up several hours in the hot sun, about 4 feet from the shade, and were not permitted to get in the shade.

L. J. Simpkins testifies that everything they had was taken from them; that the straw was taken out of the bunks and they had to sleep on the boards.

The proof showed that these men were allowed to seek the shade, and that they only stood in line one day, while their quarters were being searched for the tools with which they had attempted to escape. The straw had to be taken away because it had been used to conceal the earth removed from the tunnel. Men sick enough for the hospital were never denied admission thereto.

L. J. Simpkins testified:

> I was taken from the bull pen up to the county jail about November 12 or 15. The deputy came in the bull pen and said, "I have got orders to take you to Wallace."

I says, "Who gave you those orders?" He says, "Captain Edwards." When I got up to the jail the jailer told me he had orders to put me in solitary confinement on bread and water. I was fed on bread and water for nine days, and in solitary confinement for about sixty days. The jailer said he had orders for doing this from Captain Edwards.

These statements of Simpkins are fully disproved.

By November 12 or 15 the prison had been abandoned and the military force was no longer used in guarding prisoners. While Simpkins was the acknowledged leader of the attempt to tunnel out and as such was amenable to severe prison punishment, the proof shows that after October, 1899, the officers of the Army had nothing whatever to do with them. The testimony of Captain Edwards is unhesitatingly accepted as the true version of the occurrences connected with the attempts to tunnel out of the prison.

Under martial law the military power is supreme, and the only limitation to it is that it must be exercised in accordance with the principles of justice, honor, and humanity, and the laws and usages of war. A military commander may, therefore, use such means, subject to these limitations, as may seem necessary to enforce the usual rules of prison discipline.

Captain Edwards was fully justified under the circumstances in adopting the measures he used to enforce prison discipline. They were not severe.

It was shown that Captain Edwards, U. S. A., commanding the military forces in the district under martial law, detained a civil prisoner by the name of Tom Heney, for alleged infraction of prison discipline, after his release had been ordered by the officer representing the executive authority of the State.

When the United States was called upon to suppress "domestic violence" it was not acting under the orders of the State, but was there to fulfill one of the constitutional guarantees. The troops were not under command of the governor of the State, but under command of the military officers and the President; and they were not required to take orders from "the officer representing the executive authority of the State," although he was properly consulted. The fact that such officer ordered the release of Heney was not, therefore, sufficient reason for releasing him, if, in the exercise of sound discretion, it appeared to the authorities representing the United States that such release would retard the suppression of "domestic violence."

This particular prisoner is charged with having been one of the ringleaders of the riot of 1892, and was indicted at that time; was the predecessor of Young in the office of sheriff of Shoshone County, and appears to have been very much the same kind of an official; was sheriff when the brutal murder of Whitney was committed; knew some of the assassins, but made no arrests, and opposed offering a reward for the apprehension of the murderers; was sheriff when the arms of the National Guard company at Wardner were stolen, and in reply to a letter from the governor urging prompt action to recover the arms, wrote him "to mind his own business;" was engaged in attempting to intimidate witnesses in the Corcoran case, and attempted the same thing in the corridors of the Capitol against one of the witnesses who appeared before this committee.

Captain Edwards was fully justified in the action he took with this prisoner.

The ninth charge is follows:

> Whereas it is charged that by the use of the military power the writ of habeas corpus was suspended for months in Shoshone County, and the right of free speech, free press, and peaceable assemblages were denied to the peaceable citizens of that community, without any excuse or justification whatever.

This paragraph naturally subdivides itself into four heads, and charges that by the use of the military power the writ of habeas corpus was suspended for months in Shoshone County; that the right of free speech was denied to peaceable citizens of that community, without any excuse or justification whatever; that the right of free press was denied in the same manner; and that peaceable assemblages were also denied. The testimony shows, beyond any question whatever, that none of these rights of the citizens of the State of Idaho were denied or in any manner interfered with by the military power.

The charge that the writ of habeas corpus was suspended has been considered under the second charge, and will not be referred to again.

There is no evidence to prove that the right of free speech was denied to peaceable citizens of that community, without any excuse or justification whatever, by the use of the military power.

As to interference with the mail directed to the prisoners, the following charges were made:

Frederick Oscar Martin testified:

> When I was in the bull pen several letters addressed to me were never received, but I do not want to charge the loss to the soldiers. I have found out since I was released that several letters were addressed to me that I never received.

L. J. Simpkins testified:

> Between May and June I received three letters which were opened. I complained to Mr. Coakley about having the mail opened. He said that was his orders. I have seen letters opened that came from England, Sweden, and Germany. I think any man in the bull pen that received any mail received them opened. My mail was tampered with. Several letters came in with the envelopes gone, and the nigger soldiers that brought them trying to read them. We were not allowed mail without it being opened and read before it came to the bull pen. Some letters sent to me I never got.

Warden Coakley testified that when mail came to the prison which was postmarked in Shoshone County he would send it in by one of his deputies, with the request that the letter be opened by the prisoner in the presence of the deputy. When letters arrived which had been mailed outside of Shoshone County, he instructed they should not be opened. To the best of his knowlege, his instructions were obeyed. No complaints were ever made to him about the opening of letters. The letters, he said, were opened by the men and returned to him. He never read them; would give them a passing glance. (Pp. 1178, 1190, 1206, 1207.)

Bartlett Sinclair testifies that this order was made by the governor himself, but whether made by the governor or by the officer in command of the troops, it was a proper measure of prison discipline as carried out by the warden. The soldiers had nothing to do with the mail. It was handled entirely by State officials.

There is no proof that the right of free press was denied to the peaceable citizens of that community without any excuse or justification whatever by the use of the military power. The only evidence bearing upon this point is the incident of the suppression of the

Mullan Mirror, a newspaper conducted by Wilbur H. Stewart. Governor Steunenberg declares that this paper was suppressed (p. 1049)—

> for seditious and inflammatory and violent utterances in which the policy of the State and its officials were bitterly assaulted; it was intended to have inflamed the public mind and prevent a peaceable solution of the difficulties that were apparent in that county, and intended to prevent the restoration of normal conditions.

Mr. Sinclair testifies (p. 1644) that this paper had contained a great many seditious articles—articles calculated to obstruct the establishment of law and order in the prescribed district—and he requested him to cease that character of editorials. This was a week or two before he was arrested. He paid no attention to the request. Furthermore, he carried his inflammatory discussions into the streets, urged men to resist the State and resist the authorities, and stated that just as soon as the troops were out the dynamiters would again be on top. Mr. Sinclair himself made the arrest of Mr. Stewart, and did it on the ground that his paper was seditious, and that conditions could not be improved while he and others continued to inflame the local public mind. After Mr. Stewart was imprisoned the paper continued to publish inflammatory and seditious articles, and the office was thereupon seized by the State authorities and closed, and the type and other materials removed. The property passed into the hands of the sheriff of the county, and, a writ of replevin being sued out on behalf of the owners to recover the same, the sheriff refused to comply with the writ, under directions of the executive authority of the State, on the ground that it was a military necessity to suppress the paper. The statement made by Mr. Stewart that Mr. Sinclair promised him that if he would resume publication of his paper and come out in support of the State authorities he would lose nothing by such a course, and that it would be to his financial benefit, was absolutely denied by Mr. Sinclair, and was not proven. Mr. Sinclair did advise him to republish his paper with the determination to support law and order, which he declined to do.

It is charged that certain newspapers were refused admission to the prison. George Cornell testified:

> While in the bull pen we could not buy the San Francisco Examiner. We could get the Spokane Review; that was for sale by guards. The Idaho State Tribune was not brought in, nor was the New York World or Journal. The Review was the only paper I ever saw on sale except the Wardner News.

L. J. Simpkins testified:

> The report was that the Post-Office authorities had issued an order to shut out the Idaho State Tribune from the men in the bull pen. I heard that an order to that effect by the postmaster had been printed, but I did not see it.
>
> Warden Coakly told me he had rather we should have no other papers except the Spokane Review and the Wardner paper. The San Francisco Examiner, the New York World, the New York Journal, and other papers which condemned the governor and General Merriam were refused admission to the bull pen because of that fact. We were prevented from having the Idaho State Tribune and the Mullan Mirror.

The Post-Office authorities excluded no paper from the prison. Warden Coakley denies the above statement attributed to him. It was not proved that any New York or San Francisco papers were excluded. If any were kept out it was done by the State authorities, and doubtless because of seditious and incendiary articles published by them.

Captain Edwards testified on this point (p. 1947) that he understood the State authorities had prohibited the introduction in the prison of papers that contained incendiary articles. The Spokane Review, of Spokane, Wash., was the only daily paper sold there by newsboys, and that circulated freely in the prison.

There is testimony to the effect that when martial law was declared a censorship was established of all telegraph messages leaving Wardner. This lasted about a week. The only testimony introduced showing that any authority of this kind was ever exercised was submitted by Mr. Malott, a newspaper reporter, and is to the effect that Lieutenant Bennett, U. S. A., once suggested the omission of some 20 or 30 words from a newspaper report prepared by said Malott which reflected upon the personal character of one of the county officers of Shoshone County.

The only proof submitted to the committee bearing upon the denial of peaceable assemblages is that in regard to the proclamation with reference to the celebration of July 11, 1899, which reads as follows:

> Notice to all residents of the Cœur d'Alenes:
>
> Whereas the authorities have been reliably informed that a number of residents of Shoshone County propose to celebrate on July 11 certain acts committed in violation of law and order and to incite rioting and resistance to the laws of the State and the United States.
>
> Now, therefore, this is to notify all persons that no such celebration within Shoshone County will be permitted.
>
> All persons giving encouragement by holding meetings or giving assistance by contributions or otherwise, and all persons taking part or encouraging others to take part in such celebration, or permitting others to take part in such celebration, over whom, by reason of relationship, they exercise control, will be liable to arrest and imprisonment.
>
> The peace officers of the county are instructed to deny the use of the public highways for all such disgraceful and unlawful exhibitions in commemoration of said criminal act.

Governor Steunenberg testifies (p. 1048) that the 11th of July celebration commemorated the fight between union men and nonunion men in Shoshone County in 1892, in which fight two nonunion men and three union men were killed and a number wounded.

> It is an annual memorial day, and in that county for quite a number of years back it has superseded the celebration of the Fourth of July by quite a majority of the people. Some of the citizens want to celebrate the Fourth of July as a national holiday, and others want to celebrate the 11th of July as the commemoration of the fight between the union and nonunion men, and considerable antagonism and friction has been brought about by that fact.

The governor was present at that time and ordered a notice issued forbidding the celebration of July 11, because the county of Shoshone was in a state of insurrection and rebellion, and such a tension existed at that time that he thought it very ill advised to have any such celebration. The governor further says (p. 1049):

> I was on the streets of Wallace on the 11th of July, and several ladies came and spoke to me and asked me whether the proclamation was intended to prevent them from decorating the graves and carrying flowers, and so on, and I told them it was not intended to prevent anything of the kind; it was simply intended to prevent seditious speeches and inflammatory speeches, such as had been indulged in there in the past.

The charge that this notice was directed against the women and children in that district is entirely unsupported. No women or children were arrested, no such orders were issued, and Sinclair expressly ordered that under no circumstances should the women or the children be interfered with. Even had the women paraded in violation of this order of the 11th of July, he declared that they would not have been arrested (p. 1726).

The testimony shows that the right of free assemblage has existed in that district ever since the declaration of martial law.

There is absolutely no testimony connecting the military force with the suspension of the writ of habeas corpus or the denial of the right of free speech, free press, and peaceable assemblages to the citizens of that community.

The tenth charge is as follows:

> Whereas when the Industrial Commission sat in Wallace all union men who had been long residents of the county were in the "bull pen" and had no opportunity to appear before the commission; others were arrested while on their way to Wallace to appear before the commission and thrown into the "bull pen" until after the commission adjourned.

The only evidence of any character whatsoever tending to substantiate this charge is contained in the testimony of William Powers, who states (p. 310) that he had been summoned by Mr. Ratchford to testify before the Industrial Commission and was waiting at Mullan to take the stage to Wallace, where the commission was sitting, when he was arrested by a deputy and put in prison, where he was detained about ten or twelve days. The Industrial Commission sat at Wallace from July 26 to July 29. Mr. Powers was arrested July 28 and discharged August 9, 1899.

The testimony of Governor Steunenberg on this point (p. 1049) is that there must have been several hundred union men in Shoshone County that could have come before the Industrial Commission if they had so desired, and that any man in confinement who had been asked for by the commission would have been produced. No complaint of this kind ever came to his ears, and until this resolution was brought to his attention he had never heard of it.

Bartlett Sinclair testifies (p. 1646) that no one was prevented from going before the Industrial Commission, and Dr. France says (p. 1593) that he had no knowledge of anybody being arrested while he was on his way to appear before the Industrial Commission, and that the Industrial Commission never made any request on him to produce any prisoners. The testimony of Hon. John C. Bell, a Representative from the State of Colorado and a member of the Industrial Commission, is conclusive upon the point that the charge contained in this paragraph of the resolution is absolutely unfounded. Mr. Bell was chairman of the subcommittee which went to Wallace to investigate the troubles there. The purposes of the committee were announced by him as follows:

> We were going down for the purpose of investigating the conditions of capital and labor engaged in mining, and as there were some difficulties down there we wanted to be absolutely impartial as between the employers of labor and the laborers, and we proposed to divide the time as nearly as possible between the witnesses for both sides.

Mr. James R. Sovereign was named to select the witnesses for the Federation of Labor. It was left with "Mr. Sovereign altogether to select witnesses for the miners' union." He declared that no restraints were exercised against any witness to prevent him from appearing before the commission; that Mr. Sinclair said that if Mr. Sovereign had designated a party in the prison as witness that he would have been brought before the commission without any difficulty. Mr. Bell understood that Mr. Sovereign chose all the witnesses to be examined for the so-called "miners' unions," and as Mr. Sovereign failed to state in his testimony that Powers was one of these witnesses, and as it is undisputed that any witnesses in confinement would have been produced had the commission desired to examine them, and as it does not appear that the commission made any call for or desired the testimony of Mr. Powers, it must be concluded that the charge contained in this paragraph of the resolution is absolutely unproven.

It appears that at the time the Industrial Commission met at Wallace the miners did not care to have the commission go to the prison, because it was in perfect order. It is evident, therefore, that there was absolutely no ground for complaint against the conditions existing at that time in the prison.

The eleventh charge is as follows:

Whereas it is charged that the following proclamation, in gross violation of the Constitution of the United States and of the constitution and statutes of the State of Idaho, was issued and enforced by Brigadier-General Merriam, to wit:

PROCLAMATION.

Whereas the following notice has been served upon the mine owners of Shoshone County by the duly constituted State authorities, by whom martial law has been declared, to wit:

"*To the Mine Owners of Shoshone County:*

"Certain organizations or combinations existing in Shoshone County have shown themselves to be criminal in purpose, inciting and, as organizations, procuring property to be destroyed and murders to be committed, by reason whereof it has been twice necessary to declare martial law in Shoshone County.

"You are therefore notified that the employment of men belonging to said or other criminal organizations during the continuance of martial law must cease. In case this direction is not observed your mines will be closed."

Therefore, in order to carry into effect the spirit of the foregoing notice and restore the industries of the district as far as possible, it becomes necessary to establish a system by which miners who have not participated in the recent acts of violence, and who are law-abiding people, may obtain work, and, that order and peace may be established, the following is promulgated for the guidance of all mine owners and employees in the affected district:

All parties applying for underground work in any of the following mines will be required to obtain from Dr. Hugh France, the duly appointed and authorized agent for the State of Idaho for this purpose, or his deputy, at Wardner or at Wallace, a permit authorizing said person to seek employment in any of the following mines: Bunker Hill and Sullivan, Last Chance, Empire State-Idaho, Consolidated Tiger and Poorman, Hecla, Mammoth, Standard, Helena-Frisco, Gem, Morning, Hunter, and such others as may be hereafter included in the above list. Parties applying for such permits must be prepared: First, to deny all participation in the riots of April 29, 1899, in Shoshone County; and second, to deny or renounce membership in any society which has incited, encouraged, or approved of said riots or other violation of public law.

Mine owners must refuse employment to all applicants for underground work who do not present a duly signed permit authorizing the same. Such permit will be deposited in mine-owner's office subject to periodical inspection.

All parties now under employment by any of the mines above named will be required to procure, within ten days from this date, the permits above referred to as a condition to their remaining in the service of their respective companies.

By order of the governor and commander in chief:

BARTLETT SINCLAIR, *State Auditor.*

Examined and approved.

H. C. MERRIAM,
Brigadier-General, United States Army.

Dated May 8, 1899.

The application for permits to seek employment which union men must sign is as follows:

"*Application for leave to seek employment in the mines of Shoshone County.*

"To Dr. HUGH FRANCE, *State Representative.*

"SIR: I hereby make application for issuance to me of a permit allowing me to seek employment in the mines of Shoshone County.

"I am a —— by occupation.

"I am a native of —— and am a —— citizen of the United States.

"I last worked at the —— mine in ——.

"My shift boss was ——.

"Heretofore I have been a member of —— miners' union.

"I did not participate actively or otherwise in the riots which took place at Wardner on the 29th of April, 1899. Believing that the crimes committed at Wardner on said date were actively incited, encouraged, and perpetrated through and by means of the influence and direction of the miners' unions of the Cœur d'Alenes, I hereby express my unqualified disapproval of said acts, and hereby renounce and forever abjure all allegiance to the said miners' union, of which I was a former member, and I solemnly pledge myself to obey the law and not to again seek membership in any society which will encourage or tolerate any violation of law.

"—— ——.

"Dated this —— day of ——, 1899."

The application which nonunion men must sign is as follows:

"*Application for leave to seek employment in the mines of Shoshone County.*

"To Dr. HUGH FRANCE, *State Representative.*

"SIR: I hereby make application for issuance to me of a permit allowing me to seek employment in the mines of Shoshone County.

"I am a —— by occupation.

"I am a native of —— and am a —— citizen of the United States.

"I last worked at the —— mine ——.

"My shift boss was ——.

"I have not been for —— years a member of any miners' union.

"I took no part, either actively or passively, in aiding, assisting, or encouraging the perpetration of the crimes committed at Wardner on the 29th of April, 1899.

"I solemnly pledge myself to obey the law.

"—— ——.

"Dated this —— day of ——, 1899."

"At this writing no union men are permitted to work in the county; the meetings of the miners' unions are prohibited."

With regard to the so-called "permit system," it may be said in brief that it is an instrument adopted by the governor of the State of Idaho to exclude from employment in the mines in Shoshone County all those persons who participated in the crimes of April 29, and to prevent a recurrence of the troubles of that day. The experience with former outbreaks in that community has been that as soon as the troops were called to the scene of disturbance the leaders of the trouble quieted down and returned to work in the mines, to await an opportunity for a fresh outbreak. It was this situation which led Governor Steunenberg to say in his testimony that this country for the last eight years has been a "hell on earth."

General Merriam, from his knowledge of the situation gained by personal observation and contact with the rioters, declared (pp. 1814, 1815):

The situation did absolutely demand a declaration of insurrection. The insurrection, which is universally admitted to have existed on the 29th of April, was no more out of existence when the proclamation was issued on the 3d of May than it was when the mill was blown up. There was a community containing, according to Mr. Robertson's estimate, 3,000 people—the immediate region of the Burke, Gem, Mace, and the Mullan mining regions. It had produced approximately 1,000 criminals in conspiracy and murder and arson. It had gone back to its hole in the ground, just as a rattlesnake may retire after striking a deadly blow, and wait for an opportunity to strike another, and depending, I will say from my belief, upon the fact, very generally illustrated since, that no member who could identify the participants in those crimes would come forward with identifying testimony. The sheriff of the county had ridden down on the train with those rioters. They are his constituents in a community in which he has lived, as I understand, quite a number of years. He has stated over and over again his inability to identify a single rioter. I believe very many more would have said the same thing. The reasons I can not give.

In order to prevent a repetition of past experiences the governor deemed it necessary to undertake heroic measures to stamp out all turbulence and disorder and to make Shoshone County the abode of peaceable and law abiding citizens. So seriously had the mine owners' interests here been crippled by the terrorism exercised by organizations of miners that some of the mine owners had given up the full control of their mines, had submitted to the dictation of the miners, and were operating their properties under written permission by the miners' unions of that district, as evidenced by the following agreement (pp. 1605, 1606):

This agreement made and entered into at Wallace, Idaho, this 30th day of July, A. D. 1894, by and between the Milwaukee Mining Company, the Standard Mining Company, and the Cœur d'Alene Mining and Concentrating Company, parties of the first part, and the Central Executive Miners' Union of the Cœur d'Alenes, by Edward Boyce, its president, parties of the second part, witnesseth:

For the purpose of settling the differences existing between the parties of the first part and the parties of the second part the following agreement has been entered into:

The present maximum wages of $3.50 per day shall be paid to all underground men.

There shall be no discrimination in the employment of men; the men now in the country ~~shall have the preference. No men shall be imported for the purpose of working in the mines.~~ The men who ~~lately left the employment of the company,~~ who were objected to, shall not again have employment in any of the above mines.

It is hereby agreed by both parties hereto that should any differences arise between the parties hereto that the same shall be settled by arbitration.

It is the desire of both the above parties that the long-existing differences be, and are hereby, buried for all time; that henceforth both parties be friends and work for the mutual benefit of both parties.

In witness whereof we have hereunto subscribed our hands and seals the day and year first above written.

MILWAUKEE MINING CO.,
A. B. CAMPBELL, *Vice-President.*
STANDARD MINING CO.,
A. B. CAMPBELL, *President.*
CŒUR D'ALENE MINING AND CONCENTRATING CO.,
A. B. CAMPBELL, *Vice-President.*
A. L. GROSS.
EDWARD BOYCE, *President C. E. M. U.*

Witness:
E. H. MOFFITT.
H. R. ALLEN.

This agreement adopted by Central Executive Miners' Union July 30, 1894.

[SEAL.] JAMES CLANCEY, *Secretary-Treasurer.*

The only mine in that community which had not submitted to this un-American dictation was that operated by the Bunker Hill and Sullivan Company. In this mine was freedom of employment. In the other mines the so-called miners' unions dictated as to who might be employed.

The evidence tends to show that nobody except the miners in the mining centers of the Cœur d'Alene district participated in the crimes of April 29, 1899.

Dr. Hugh France testifies (pp. 1589 and 1601):

> The sworn evidence before the coroner's jury was to the effect that the presidents of the different miners' unions of the Cœur d'Alenes on the morning of April 29, 1899, called their regular miners' union meetings, and the members armed and masked themselves in the halls and proceeded on this mission of destruction of property and life. That is why they (the permit system) were directed toward particular miners' unions and the miners.

It appears that when any nonunion men committed crime in that vicinity they were vigorously prosecuted by the county administration, while the miners' union men were not (p. 1603).

Dr. Hugh France testifies (p. 1605), in regard to miners employed at Burke or Gem becoming members of the so-called miners' unions there:

> As a rule, it meant if he did not become a member he was run out of the canyon or assassinated.

It was a "permit system" operated by bodies of men which the governor and the coroner's jury held to be criminal organizations. Some similar measures seemed to be necessary to purge this community of the men who had participated in crime in that county for six or seven years, and who seemed to take great delight in murder and arson. The "permit system" was devised. It was discussed at a meeting of some of the mine operators, but was at first strenuously opposed by them. The mine operators preferred to utilize the services of these old hands, however much they had been engaged in criminal acts, rather than break in new and untried labor. The governor, however, insisted on his plan, and it was forthwith carried into execution. The proclamation was issued by Bartlett Sinclair, the governor's agent on the scene, and he submitted it to General Merriam. General Merriam in his report says, on this point, as follows:

> On the evening of May 8 I was informed by Bartlett Sinclair, representing the governor of Idaho, that notice had been served upon all of the mine owners of the district by which, during the continuance of martial law they were forbidden to employ miners unless they were able to present permits from the State authorities.
>
> This was the first intimation that came to me on the subject; in fact there was no manifest occasion for my having any information on the subject, as it did not concern me directly, but Mr. Sinclair said he was preparing some rules for carrying out the order and desired to make them such as I could approve.
>
> After reading over the rules I stated that there was one point in which I thought an improvment could be made—that I should rather see provision made by which an innocent member of an innocent union might receive the State permit and retain his employment. To this Mr. Sinclair at once assented, and at his request I wrote the following, to be added to the central paragraph—that enumerating the mines which were to be governed by this system of permits, viz:
>
> Parties applying for such permits must be prepared: First, to deny all participation in the riots of April 29, 1899, in Shoshone County, and, second, to deny or renounce membership in any society which has incited, encouraged, or approved of said riots or other violation of public law.
>
> I authorized my name to be printed at the bottom of the poster under the words "examined and approved," on condition that the above amendment was inserted. This was assented to at once, and the posters were printed and sent out.
>
> It was not intended that the troops under my command should assume any part whatever in carrying into effect these or any other rules affecting laborers or labor in the State of Idaho, nor have they done so in the remotest degree.
>
> It has seemed to me necessary to be very explicit in reporting upon this system of labor permits because of the persistency of a portion of the public press, and especially of the various labor unions all over the country, in charging me with making the order which is quoted in the preamble of the above proclamation.
>
> This practice has been continued and emphasized in spite of the self-proclaimed authorship shown in the phrase "by the duly constituted State authorities." Furthermore, on this point Governor Steunenberg, who is himself a labor-union man

and a friend of law-abiding organized labor, gave out for publication the following statement, dated May 20, 1899:

In dealing with the conditions at present existing in Shoshone County it is the purpose of the State authorities to restore peace and safety to the law-abiding inhabitants of the county and to punish and totally eradicate from this community a class of criminals who have for years been committing murders and other crimes in open violation of the law.

To this end I shall use the powers vested in me to the fullest extent necessary. It is the intention that the protection of the law shall extend alike to the men who labor and the men who employ. There will be, and is, no war upon organized labor as such, but certain so-called labor organizations, as they exist and have existed under various names and at various times in Shoshone County, are not to be considered with law-respecting labor organizations elsewhere. They have been and are now controlled by desperate men, who use it to support them in their lawlessness, and through it keep the sympathy and support of labor organizations elsewhere not conversant with conditions here. These desperadoes stop at no crime, either upon law-abiding members of their own organization, or business men, or laborers, or mine owners, and thus terrorize the entire community. Law-abiding and law-respecting labor organizations here and elsewhere should hasten to disclaim any and all sympathy with organized reign of terror that has prevailed in Shoshone County for some years past and, as in this case, when the same has been carried on in the name of those who toil, the speedier should be the disclaimer; and in disclaiming they should further lend every effort to assist in the prosecution and conviction of those who, by their acts of lawlessness and crime, defame the cause and misrepresent the true mission of organized labor.

Certain of the county officers, whose sworn duty it is to preserve order and protect property, have for years been either in sympathy with criminals or intimidated by them, and in applying the remedy nothing less drastic than the disease itself will cure. There can be no compromise with crime nor with criminals; and further, in the performance of my duty, there will be no subserviency to any private interest. All good citizens are urged to cooperate with the authorities in carrying this purpose into effect.

The wage rate in the Cœur d'Alenes is the highest for similar labor paid in the United States. Laborers are assured that they can come here and work and receive that protection to which every American citizen is entitled. Every resource at my command will be used to this end, and they are further assured that none of the present safeguards will be withdrawn until those certain inalienable rights, among which are enjoying and defending life and liberty, acquiring, possessing, and protecting property, pursuing happiness, and securing safety, guaranteed by our Constitution and dear to every American heart, are firmly and lastingly established.

FRANK STEUNENBERG.

General Merriam said further on this point (p. 1813):

A common error has been made by the public press in failing to note that an order addressed to mine owners, and printed in quotation marks, and introduced into the preamble of this proclamation, is no part of the proclamation proper; and with that order addressed to mine owners, and I presume to all mine owners, I had absolutely no part and absolutely no knowledge until I saw it in the proclamation prepared containing the rules by which it should be carried out.

With reference to lending my approval to that paper, I wish to say that while this permit system did not concern me directly, there was nothing in my instructions which limited me in the exercise of my judgment upon any measure which I deemed advisable or necessary in meeting the exigencies of the situation. It did concern me indirectly in this, that if the carrying out of this proclamation should result in violations of any kind or disturbance of the peace, then it would be my duty under the orders I had to act (p. 1814).

Any disturbance or any breach of the peace, growing out of those or of any other cause, would have been suppressed by my troops regardless of the origin of the row (p. 1818).

Bartlett Sinclair corroborates the testimony of General Merriam on this point (p. 1670):

General Merriam read the permit application over and made some suggestions, the exact purport of which I can not now tell.

Representative Cox. They are in the record there.

The WITNESS. I will accept that as true. I adopted those, and my consultation with General Merriam about that had nothing more to do with the thought of his being implicated in it than it has now with any member of this committee. It was done as a matter of courtesy, to give the application dignity, and to receive assurance, in case there was an attempt made to obstruct its enforcement, that I could call on the troops, as I had done in the past, for protection. That is all the meaning that his approval of it has.

It thus appears that General Merriam's connection with this proclamation was to write "examined and approved" and to sign his name to the proclamation. This was unnecessary and added nothing to the potency of the measure, which was purely an instrument of martial law, intended to aid in restoring peace and order to that community. It was a device of the State, and its character was not changed in the least by bearing the signature of the commander of the military forces. That this was clearly understood by the War Department and by General Merriam, is made plain by the following extracts from his report and from various telegrams:

WARDNER, IDAHO, *May 17, 1899.*

ADJUTANT-GENERAL, *Washington, D. C.:*

Union miners now refusing work under conditions deemed by State authorities necessary to insure good order. This seems partly due to sympathy and support given by kindred unions in other States. Result is large numbers of idle and sullen men in the mining centers—Mullan, Burke, and Wallace.

Mounted troops asked for in yesterday's telegram would have a restraining effect. The governor's course appears to me judicious and his prompt support necessary to arrest lawlessness and crime, which has obtained in this county for several years. With troops placed order will be preserved, trials will go on, witnesses can testify under feeling of security, well-disposed miners will return to work, and the turbulent element gradually disappear.

MERRIAM, *Brigadier-General.*

WARDNER, IDAHO, *May 25, 1899.*

ADJUTANT-GENERAL, *Washington, D. C.:*

Conditions here steadily improving. Some miners accepting permits to work and others leaving the district. Major Smith's squadron First Cavalry arrived at Wallace yesterday; will patrol the district and relieve infantry guards over all magazines containing explosives.

I think acute stage of disorders is passed and nothing now required but time for restoration of civil functions, trial of the rioters, and reorganization of local industries.

Number of prisoners to-day is 330. Nearly all admit being in the riot of April 29. Sanitary condition is beyond complaint. No deaths; one serious case of pneumonia and three cases of tonsilitis and bronchitis, not serious.

I will be at Vancouver to-morrow for consultation with department staff on questions of supply and expenditures; at San Francisco Monday, then go to Denver by Thursday, leaving Major Smith in command here.

MERRIAM, *Brigadier-General.*

DENVER, COLO., *May 29, 1899.*

Gen. H. C. MERRIAM,
Phelan Building, San Francisco, Cal.:

Following repeated: Graves, Aid. Washington, D. C., May 26, via Vancouver Barracks, Wash., May 27, 1899. Gen. H. C. Merriam, Denver, Colo. To be forwarded. It is charged in resolutions by the Western Labor Union, under date of May 20, just received by the President, that owners of mines in Cœur d'Alene district are denied the right of employing any man unless he first makes affidavit that he is a nonunion miner and that the army sent to aid the State authorities to preserve peace and protect property is being used to enforce the alleged order. The statement must be the result of some misunderstanding, which should be properly corrected. The President wishes a statement of facts at once.

By order of the Secretary of War:

H. C. CORBIN, *Adjutant-General.*

[Sent from train May 30, in Nevada.]

ADJUTANT-GENERAL UNITED STATES ARMY,
Washington, D. C.:

Resolutions referred to in your telegram are at fault, like most others on that subject. State authorities require miners to obtain permits, but no affidavits are required. Men must sign a paper denying participation in the crimes of April 29, also deny membership in any society which did incite or approve those crimes, and promise to obey the law.

Troops are taking no part in this unless keeping the peace does so. Every mine owner I have seen strongly approves.

MERRIAM, *Brigadier-General.*

WASHINGTON, D. C., *May 31.*

Brigadier-General MERRIAM,
Commanding Department of Colorado, Denver, Colo.:

You will instruct Major Smith, commanding at Wallace, that he is to use the United States troops to aid the State authorities simply to suppress rioting and to maintain peace and order. These were your original instructions. The Army must have nothing whatever to do with enforcing rules for the government of miners or miners' unions. That is a matter for the local authorities to deal with.

R. A. ALGER, *Secretary of War.*

The plan of operation of the "permit system" is shown by the testimony to be as follows (pp. 1636 and 1637). Sinclair testifies:

> The method by which the applications are signed is this: An applicant appears at the office of one of the deputies and a printed application is handed to him. No questions are asked. He reads the statements, and if he can subscribe to them, unless the deputy has positive knowledge that he is subscribing falsely, he receives a permit.
>
> It is those men of that particular union and no other union that are not law-abiding. It is not aimed at labor unions at all, but is aimed at that organization, which we hold has taken itself out of the category of labor organizations by reason of its criminal acts.
>
> To-day the mines of the Cœur d'Alene are worked by union men, but not by members of that one union. We claimed that was just such an organization as the Mafia, of New Orleans, or the Molly Maguires; and that is true; and we felt that the State had a right to suppress it. It had been responsible for all the crimes in the Cœur d'Alene up to that time, and including that.

The proclamation at first applied only to underground work. Perhaps a month after the original proclamation its application was extended, by another written notice or proclamation, to workers above ground connected with the mines (p. 1673).

This amendment was opposed by the management of the Bunker Hill and Sullivan Company, for the reason that they were at that time engaged in reconstructing their works and had a large number of men employed on their mill. They requested delay until the mill could be completed, but this permission was refused and the amendment went into operation at once (p. 1756).

At the time when the hearing began before this committee some 7,000 permits had been issued, of which perhaps 130 went to men who had belonged to the miners' unions of the Cœur d'Alenes. The regulation does not apply against prospectors or men who own their own claims, and only some half dozen arrests have been made for its violation. These have been of men who obtained permits by giving false names or for working without a permit. It was not directed against labor organizations as such, nor was any member of a miners' union or other labor organization who did not participate actually or otherwise in these riots denied a permit to work (p. 1587).

Great stress has been laid upon the fact that a permit system was established, under which it was requisite for all men desiring to be employed in the mines of Shoshone County to procure from duly and regularly constituted authorities a permit, which the applicant was required to sign, and a copy of which was inserted in the resolution which has been made the basis of this investigation. These permits were issued under and in accordance with a proclamation from the governor of Idaho, through his representative, and in said proclamation is distinctly stated the parties and organizations to which it refers. Not a single word or line of that proclamation mentions the name of labor or of a labor organization. Organizations which commit criminal acts are justly called criminal. Individuals who commit crimes are justly called criminals, but no true friends of labor, or of labor organization, will for a moment defend crime, either by an individual or by an organization, even though said crime be committed by an individual or organization claiming to be acting under the name of organized labor.

F. O. Martin, a witness who appeared before the committee, was arrested for obtaining a permit under a false name. It was shown that if he had applied for a permit under his own name it would have been refused, because the State was in possession of sworn evidence (pp. 1490 and 1589) that he was a member of the mob of April 29, for which offense, and for participating in the crimes committed that day, he is now under indictment.

This "permit system" can only be defended on the ground of the extreme necessity of martial law, and whether it should be continued after martial law ceases is a question which only the State of Idaho can decide. It has proved a most effective means toward accomplishing the end for which it was devised. It has been carried on without any active aid or assistance of the Federal troops. Whether it can be maintained if troops were withdrawn can not now be determined, and is not within the scope of this investigation. It is clearly proved that no man has been prevented by the Army of the United States since April 29, 1899, from going to work in the Cœur d'Alene mining district.

The last charge of this paragraph, that no union men are permitted to work in that county, and that the meetings of miners' unions are prohibited, is absolutely disproved by the fact that various union men are now at work in the Cœur d'Alenes, and that meetings of miners' unions are being held there weekly (p. 1593).

Complaint is made, while all men working in mines in Shoshone County are compelled to take out permits, an instance is alleged to have occurred where men were forced against their will and at the point of the bayonet to return to work in the Tiger-Poorman Mine. The work was necessary to keep the pumps working so the mine would not be flooded. It is charged that the officer in charge, Captain Lyon, U. S. A., would have shot the men had they not obeyed his orders. The testimony on this point is conflicting, but the greater probability points to the truth of the account given by Captain Lyon. He is corroborated in several particulars, and the committee accepts his version of the affair. His statement is as follows (p. 1978):

> Rumors had come to me at various times that attempt would be made to destroy these mines (at Burke). These rumors were more or less confirmed by two attempts, or attacks made, first, upon the magazine of the Tiger-Poorman mine at Burke, between 2 and 3 o'clock in the morning, when it was dark and rainy, and the other

upon the magazine of the Helena-Frisco mine at Gem, about four or five days later, between 2 and 3 o'clock in the morning, also a dark night. Upon both of these occasions shots were exchanged, but I was unable to determine whether the other side had any casualties or what they were. They got away. My own men had no casualties. This occurred late in May or very early in June. Shortly after that, two or three days perhaps, in the latter part of May (the exact date I do not remember), in the afternoon, the master mechanic of the Tiger-Poorman mine came into the office of the mine, where I was conversing with Mr. Culbertson, and told us that the pump men had gone out. Mr. Culbertson asked him why and whether they had assigned any reason for their doing so, and a general conversation, a triangular conversation, between Mr. Culbertson, Mr. Gill, and myself resulted. My effort in this conversation was to find out, if possible, whether or not these pump men had been intimidated in any way or had been ordered out by the union or by anybody. As a result of this conversation between the three of us, it was made very clear to me that they had been intimidated and had been ordered out, probably by the Burke miners' union. Mr. Culbertson was very apprehensive about the safety of the mines. It developed during the conversation that the pumps were throwing, according to Mr. Gill, between 1,300 and 1,400 gallons of water per minute, and Mr. Culbertson told us to throw in the buckets and begin bailing. These buckets, I understood, were large affairs, holding a barrel perhaps, and they might keep down the water until something could be done.

Mr. Culbertson, as I have said, was very apprehensive about the safety of the mines. I understood that it would only be a matter of a few hours, anywhere from six to twelve, before the pump on the 1,600-foot level, the last pump, would be covered and its use would be destroyed. He asked me to see what I could do about it and I realized that something had to be done and done very quickly. I stepped out on the street and happened to see two men whom I regarded to be leaders among the men of the local union—Frank Gustavson, I think, and a man by the name of Kelly—I asked them to please tell the members of the Burke miners' union that I would like to see them as quickly as possible; at the same time I sent my orderly down to the camp to tell my sergeant to send sentries up to the hall to maintain order, but they were to remain on the outside and not to come in. Their orders were to maintain order. At the same time I told the sergeant to get his men under arms in case of any disturbance.

In ten or fifteen minutes the hall was pretty well crowded and apparently everybody was there who intended to come; and I then told them that I had been informed that the pump men had quit work and that I believed they had stopped work by order of the Burke miners' union, or the union of Butte, Mont., or had been intimidated in some way and forced to stop; that I regretted the occasion very much, indeed, and that I believed they were making a mistake. I told them that I believed it only fair to them that they should know what my orders were; that I had been ordered to prevent the destruction of the mines in Canyon Creek. I stated that I interpreted that order to mean the destruction from any cause—fire, dynamite, or water—and that I proposed to carry out that order, no matter how disagreeable it might be, and that I would give the Burke miners' union, consequently, just five minutes to rescind that order to the pump men.

Mr. Culbertson then made a few remarks. The presiding man turned to me and said: "There is another side to this affair; we would like to have you hear it." I told him that it was not a time to argue, that the shaft was filling up and I could not listen to the other side; that it would have no effect; that it could not have any effect upon me or upon my actions. He then said that five minutes was not long enough to take a vote and that he wanted half an hour. I then doubled the time and gave them ten minutes. In order that they might have greater freedom, as I stated to them, I left the hall. At the end of the ten minutes a committee waited upon me and I entered the hall. The committee reported to me that the Burke miners' union had nothing to do with this order, and practically repudiated it.

I then called for the pump men and asked them if they were there. Five of them were there. I believe there were seven all told. I asked them if they were willing to go back to work in view of the report of the Burke miners' union. The spokesman of these pump men turned to me and said: "Before we go back to work we would like to ask if the Burke miners' union would offer any objections or throw any obstacles in our way when we go back to work." I turned to this committee and told them, that as they represented the Burke miners' union they could answer that question. After some hesitation and delay they said that the Burke miners' union would not offer any objections to the pump men or throw any obstacles in their way if they went back to work. I congratulated the union men upon the wisdom of their course, and also the pump men, and told them I would have nothing further to say to them or do with them, and that they could start the pumps whenever they got ready. They went out and started the pumps soon after that and Mr. Gill reported to me later that the pumps were going as soon as they could get steam down to them. They had been closed down about an hour; the pipes were not quite cold but they started very soon after that. Mr. Gill also reported to us in the office that the shaft had filled up in the hour, or the time they were not working, the distance of 75 feet, notwithstanding the fact that the buckets were working at the time. The lowest level, if I remember correctly, was 1,600 feet. There was a pump on that level; the shaft was down some hundred feet below that.

I made no threats against the pump men at this meeting and we did not even make a show to protect the pump men when they went to work. There were no sentinels placed in the mines and never were; there were sentinels placed on the surface about the buildings, but that, it was clearly understood between Mr. Culbertson and myself, was to protect from fire, and those were my special orders. They had nothing to do with the pump men; there never were any sentinels over them.

Nothing was said to me that day to the effect that these pump men had made the statement to Culbertson that they could not work with permit men and would not work with them, and were going out.

There were from 100 to 120 men present at that meeting. As I told Gustavson and Kelly that I wanted to see the members of the Burke Miners' Union my natural inference was that most of the men in the hall were members of the Burke Miners' Union. At that meeting I gave them five minutes to rescind an order, if there was one. I supposed and believed then, and believe now, that there was an order issued by that union to the pump men to go out of the mines. I gave them five minutes to rescind that order and afterwards extended it to ten minutes. I understood that after the pumps were shut down the tanks had been started. I did not know anything about the capacity of the tanks to keep the mine free from water, except what Mr. Gill told me at the time, that they were utterly insufficient; that they might help, but that they could not make any sort of headway against keeping the water down, that the water would gain constantly on them. I understood that during the hour the pumps were stopped the shaft had filled 75 feet.

I had been given repeatedly to understand by men up Canyon Creek that the miners, particularly at Burke, were a fearless, devilish lot; that they loved nothing better than a fight, and unless things were handled very carefully there would be a fight; that they did not care anything about their lives. The coroner told me that in a conversation, and I thought he was a man that knew better than I did, and I think perhaps he was right. I did not know what was going to happen in the hall and I thought it was best to be prepared. If there were soldiers outside there it might put a stop to anything or catch it in its incipiency before it got beyond control. It was a precaution on my part and for that reason I stationed four soldiers as guards outside the door to the hall where the meeting was held.

The twelfth charge is as follows:

Whereas it is charged that during the months when a great portion of the male citizens of Shoshone County were thus unlawfully held in imprisonment by the United States troops the wives and families of the said citizens were subjected to insult and outrages by the soldiers of the United States stationed in that county;

There was no proof produced showing that a single woman in the Cœur d'Alenes was subjected to insult or outrage by the soldiers of the United States Army stationed in that county. Some loose talk and irresponsible charges of this nature regarding some of the soldiers were indulged in, but no specific instance appears.

The only complaint on this score, which mentions any details at all, is testified to by Bartlett Sinclair (p. 1652).

Toward the latter part of the summer I had occasion to visit Burke, and a lady, whose name I have now forgotten, approached me with a small note, which, she said, was handed to her, or pushed in under her door, which purported to be signed by a negro soldier and contained an indecent proposal. I asked the lady why she had not at once reported the matter to the commander. She replied that she did not think it was worth while. I then said to her, "If you will permit me to take that note I will see that it is thoroughly investigated." She said, "No, I will not let you have it." She might have told me when she received it, but as she did not care to have me investigate the matter for her or see that it was investigated, I, of course, did not pay as much attention to it as I otherwise would.

No complaint of this kind was ever presented to Governor Steunenberg or any of his agents, or to General Merriam or any of his subordinates. General Merriam testifies that no complaint of this kind was ever made to him from any source whatever, nor did any official notice come to him through his subordinates that a complaint had been made at any time. Not a single substantiated case of outrage or insult against the wives or families of prisoners has been presented to this committee.

Captain Lyon pays the following splendid tribute to the colored soldiers:

> Q. Captain Lyon, it has been testified that the colored soldiers were insolent and arrogant and domineering, and all that, in the service they performed. I will ask you to state what the fact is about that.—A. My idea was exactly the contrary of that. No complaint was ever made to me about their insolence or about their being overbearing, but several people up there did make the remark to me that I seemed to have a jolly crowd of good soldiers there; that they were always jolly and laughing and singing when they were not on duty, and that they did not seem to mind very much being up all night and wet through. Several people remarked on their good nature. No complaint was ever made to me. I never noticed any insolence on their part.
>
> Q. State to the committee what the character of these colored soldiers was.—A. As soldiers, they were fine soldiers in the field. As to their character, I would have given them all a good character, a great many of them very good, or excellent, on their discharge. My detachment was a picked detachment from a body or company of about 115, and I practically had the pick of those men. My noncommissioned officers were very carefully selected.
>
> Q. Captain, did you serve with this command in Cuba?—A. Yes, sir; this was my own company.
>
> Q. These colored soldiers, then, were in Cuba with you?—A. A number of them were. Some of them were recruits of from four to eight months' service, but all my noncommissioned officers were old soldiers, whom I knew and knew very well, and a great many of the privates were old soldiers.
>
> Q. All the noncommissioned officers, then, were among these colored troops who charged with you up San Juan Hill?—A. Yes; they were all men who had been under fire.

The thirteenth charge is as follows:

> Whereas it is charged that the outrageous misuse of the military power of the United States, hereinbefore mentioned, was brought about at the instigation and in the interest of the owners of the Bunker Hill and Sullivan mines, who, it is also charged, are the owners and manipulators of other similar trusts.

There is no proof of any outrageous misuse of the military power of the United States. On the contrary, it has been shown conclusively that the military power of the United States exerted in Shoshone County was in strict accordance with their instructions and with the law.

This premise failing, the charge itself is entirely unsupported. The owners of the Bunker Hill and Sullivan mine did ask the governor of Idaho for the protection to which the law entitled them. Property of theirs valued at a quarter million of dollars had been destroyed by a mob. Civil process was paralyzed; the county administration was helpless and insufficient, or in actual collusion with the rioters, and the experiences of the past seven years showed that no relief was possible at the hands of court or jury in Shoshone County.

If the time ever comes when it is blameworthy, under such circumstances, to ask the protection of the strong arm of the military power, then, indeed, is law dethroned and anarchy supreme. It is absolutely proven, however, that the owners of the Bunker Hill and Sullivan mine had nothing whatever to do with the administration of martial law in that county, and that no mine owner or any other person outside of the governor of Idaho had any connection, direct or indirect, with the performance by General Merriam and his subordinates of their duty under such trying circumstances.

It is charged that the Bunker Hill and Sullivan Company violated the law of Idaho just as much as did the men who destroyed their property. There are two distinct charges of this character.

One charge is that of violating a statute of Idaho providing for arbitration in cases of disagreements between employers and employees. This law is found in Session Laws of Idaho of 1897, pages 141–146, and is entitled an act—

> To provide for a State board of arbitration for the settlement of the differences between employees and their employers and to provide for local boards of arbitration subordinate thereto.

Under this statute the State board of arbitration may act on its own motion or on the written application of either party to the controversy.

In the case in point the State board of arbitration took no step and neither employer nor employed asked for its intervention. There were no differences between the Bunker Hill and Sullivan Company and its employees. Their request for an increase of wages had been granted. The demand that this company "recognize" the union was made by parties not in the employ of the company. The Bunker Hill and Sullivan mine was a nonunion mine. It was outsiders who were demanding that it be made a union mine. The company had nothing to arbitrate with its employees. The charge that this company has violated the arbitration statute of Idaho is unfounded.

The Bunker Hill and Sullivan Company is also charged with having violated the following statute of Idaho:

> It shall be unlawful for any person, firm, or corporation to make or enter into any agreement, either oral or in writing, by the terms of which any employee of such person, firm, or corporation, or any person about to enter the employ of such person, firm, or corporation, as a condition for continuing or obtaining such employment shall promise or agree not to become or continue a member of a labor organization.

There is no prohibition in this statute against refusing employment to a man because he is a member of a labor organization, and there is no testimony that the company violated the provisions of the statute.

Neither did this company have any connection with the selection of sheriff, prosecuting attorney, judge, or jury. There is not a particle of testimony supporting such a charge.

The other insinuations contained in this paragraph are purely innuendoes, supported by not a particle of truth, and are unworthy of further attention.

The fourteenth charge is as follows:

> Whereas said outrages above described, as perpetrated by the United States Army and its officers, are an intolerable abuse of the rights of citizens and a dire menace to the perpetuity of free institutions and the liberty of citizens.

The committee is not satisfied that any outrages were perpetrated by the Army or its officers. The only "intolerable abuse of the rights of citizens" shown to have existed in the Cœur d'Alenes was perpetrated against peaceful, law-abiding citizens by the criminal organizations who have disgraced Shoshone County since 1892, and who are now complaining bitterly because of the prospect that the guilty may be brought to justice. The committee fails to see in this situation any menace to the perpetuity of free institutions or the liberty of honest citizens.

In the charges contained in the resolution an attempt has been made to place what is generally known and termed organized labor in a position of antagonism to the authorities of the State of Idaho and of the United States.

Your committee is not willing to believe that any organization of workingmen will for a moment consider itself honored by an attempt to make it responsible for a violation of law, or for violence in any form, more especially where that violence results in the wholesale destruction of property, arson, and murder.

The evidence in the case maintains the assertion that the insurrection, riot, murder, and destruction of property in Shoshone County was not done by organized labor, nor in the name of organized labor, nor by the vote of any recognized body of organized labor, but was done by a body of men who were not recognized by, and would not affiliate with any of the recognized national organizations of labor in this country. What has been done outside of organized labor by individuals can not be charged to organized labor. The fact that those guilty of the deplorable conduct happened to be members of some kind of an organization does not justify charging the great body of honest, conservative, organized labor with the crimes committed. If wolves in sheep's clothing creep into an organization, and under its protection seek to distort and pervert its peaceful, legitimate objects, the intelligent labor of America can discriminate between the true and the false. No greater enemy to honest labor walks the streets to-day than the man who, in the name of organized labor, picks up the cause of the disturber of the peace.

The American workman, by birth or adoption, educated in our public schools, nourished by our free institutions, and imbibing the true spirit of liberty of action guaranteed by the laws of our land, will have little sympathy with the anarchist, and will refuse to be sponsor for dynamite and destruction as arbiters of disputes between employers and employed. And, though lawless bands for a brief time may rule with a high hand, the sober second thought of American labor will not only applaud, but invoke the full use of all the power of the State and nation to uphold law and order.

There are few if any States in the Union where laboring men are better treated, get better wages, and have more opportunities to acquire homes and secure a competence than in Idaho.

The relations between laboring men and their employers in this State are unusually pleasant. With the single exception of Shoshone County, there have been no strikes for years in the State and no labor troubles of any kind.

It is clearly recognized that the reciprocal relations between employer and employed are so closely intertwined that when one suffers both suffer, when one prospers both prosper, and an injury to one is the concern of both. By working together, hand in hand, enterprise (the employer) and labor (the employed) are the marvelous forces of development and prosperity that have builded up our nation. How suicidal, then, for either to attack or injure the other. Labor creates the finished product and enterprise seeks the market. Labor receives the reward in wages, enterprise in profit on investment. To lessen wages restricts the market. To cripple enterprise discharges labor. Mutual interest and common sense dictate mutual concession and forbearance. To destroy a mine, a mill, or a factory injures enterprise at the first it is true. But it injures labor vastly more in the end. Enterprise can restore the ruined property from its reserve of accumulated wealth, but the day of toil lost to labor can not be restored. It is lost forever.

The duty of labor to labor demands that law and order shall be upheld. Anarchy and strife fall first and most heavily upon the man who toils. When his labor ceases his means to consume ceases. His labor is his capital; by the employment of his hands and his brain there is given to him the opportunity to obtain for himself and family the necessities, comforts, and luxuries of life. The great conservative power to maintain the Government in enforcing law should be the labor of the land, whether organized labor or unorganized labor. That man is not a true friend to labor who would uphold violence as a means of settling disputes between employer and employed.

The natural resources which are the gifts of the Divine Creator are transformed into instruments for the public good by the brawn and brain of labor. In this sense labor may justly lay claim to be the creator of all wealth. No member of the community, therefore, can have a higher stake in maintaining the result of his own creation than the labor which created it. In no land has there been given such opportunity for the humble to rise to positions of comfort and wealth. The safeguards thrown around our institutions by law and order have made this possible. Hardly a wealthy man of the present generation but was the poor boy of a preceding generation, and his power and opportunity to rise from poverty to wealth have been safeguarded by the wise and prudent laws of the land. The great conservative elements which are the corner stone of our Government, of all our power, and of prosperity under our flag are the little red schoolhouse on the hill and the humble home of American labor. Therefore there will be no greater conservator of law and order than the honest, true, industrious workingman of the United States.

President McKinley and the War Department exercised every precaution that the military act solely within the Constitution and not encroach in the distinct sphere of the civil authorities.

They carefully watched the changing phases of the situation, and were deeply anxious that equal justice should be given to the miners and mine owners and the rights of each should not be infringed or abridged.

They were kept accurately informed as to the state of affairs in the Cœur d'Alènes, and were in constant communication with the military in regard to their specific duty of aiding the State authorities in the enforcement of the laws of Idaho.

Every rumor of cruelty or suffering of those in prison was quickly and carefully examined into, and the President exhausted every effort to ameliorate the unfortunate conditions of those in confinement.

He exhibited his deep interest and solicitude in the cause of labor by his instruction "that the military must have nothing whatever to do with enforcing rules for the government of miners or miners' unions."

The subjoined telegrams are eloquent in their testimony of the President's kindly feelings:

THE PUEBLO TRADES AND LABOR ASSEMBLY,
Pueblo, Colo., May 11, 1899.

WILLIAM MCKINLEY,
President of the United States, Washington, D. C.

SIR: At a regular meeting of the Pueblo Trades and Labor Assembly on May 10 I was instructed to forward to you the inclosed resolution, which will, we trust, receive your consideration, bearing as it does on a subject of vital interest to millions of union people in this our country. The order of the attorney-general of Idaho and General Merriam will, we believe, if allowed to stand, create a precedent which will in time cause the shedding of much blood, to say nothing of the suffering and misery it will cause through the forcible disruption of organization among workmen and the resulting lowering of wages, for we anticipate that if this order stands and is executed it will establish a precedent which will be quickly seized upon by corporations, and it may take the saber, bayonet, and bullet to again overthrow slavery. The subject is broad and deep and merits your earnest consideration.

Very respectfully,

F. H. Richardson, *Recording Secretary.*

A reply to the assembly stating your views in the premises will be appreciated.

Washington, D. C., *May 16.*

General Merriam:

Secretary War desires report of present existing conditions.

Corbin, *Adjutant-General.*

Adjutant-General's Office,
Washington, May 25, 1899.

Mr. F. H. Richardson,
Recording Secretary the Pueblo Trades and Labor Assembly,
Central Block, Pueblo, Colo.

Sir: Your letter of May 11 to the President, inclosing resolutions of the Pueblo Trades and Labor Assembly regarding the action of Major-General Merriam in the matter of the labor disturbances in Idaho has been referred to this office, and in reply I have the honor to inform you that your assembly has been misinformed as regards the action of General Merriam, and that it is not true that he has issued an order that no union men shall be employed in Shoshone County. In this connection the Secretary desires me to inclose copy of the only instructions that have been given General Merriam by the War Department, as also two telegrams from General Merriam, dated May 16 and 17, on the subject.

Very respectfully,

H. C. Corbin, *Adjutant-General.*

Executive Mansion,
Washington, D. C., May 26, 1899.

My Dear Mr. Secretary: The President directs me to send you the inclosed communication from Mr. W. O. Williams, of Wilburton, Ind. T., concerning the miners' strike in the West. It is the President's understanding that no orders whatever have been issued by General Merriam as to who shall work or not work, and that he has only been supporting the State authority in preserving the peace. The President desires to know whether his information on this point is correct.

Very respectfully, yours,

Geo. B. Cortelyou,
Acting Secretary to the President.

Hon. R. A. Alger, *Secretary of War.*

Executive Mansion,
Washington, May 26, 1899.

Gen. H. C. Merriam,
Vancouver Barracks, State of Washington:
(To be forwarded.)

It is charged in resolutions by the Western Labor Union, under date of May 20, just received by the President, that owners of mines in the Cœur d'Alene district are denied the right of employing any man unless he first makes affidavit that he is a nonunion miner, and the army sent to aid the State authorities to preserve peace and protect property is being used to enforce the alleged order. The statement must be the result of some misunderstanding, which should be promptly corrected. The President wishes a statement of facts at once.

By order of the Secretary of War:

H. C. Corbin, *Adjutant-General.*

Sent from the Executive Mansion at 11.10 p. m.

WAR DEPARTMENT, *Washington, May 29, 1899.*

MR. PRESIDENT: I return herewith the letter from Mr. W. C. Williams, of Wilburton, Ind. T., concerning the miners' strikes in the West, forwarded on the 26th instant. No instructions were given to General Merriam other than that he should support the State authorities in preserving peace.

Very respectfully, your obedient servant,

R. A. ALGER, *Secretary of War.*

The PRESIDENT,
Executive Mansion.

DENVER, COLO., *May 29, 1899.*

Gen. H. C. MERRIAM,
Phelan Building, San Francisco, Cal.:

Following repeated: Graves, Aid. Washington, D. C., May 26, via Vancouver Barracks, Wash., May 27, 1899. Gen. H. C. Merriam, Denver, Colo. To be forwarded. It is charged in resolutions by the Western Labor Union, under date of May 20, just received by the President, that owners of mines in Cœur d'Alene district are denied the right of employing any man unless he first makes affidavit that he is a nonunion miner and that the army sent to aid the State authorities to preserve peace and protect property is being used to enforce the alleged order. The statement must be the result of some misunderstanding, which should be properly corrected. The President wishes a statement of facts at once.

By order of the Secretary of War:

H. C. CORBIN, *Adjutant-General.*

WASHINGTON, D. C., *May 31.*

Brigadier-General MERRIAM,
Commanding Department of Colorado, Denver, Colo.:

You will instruct Major Smith, commanding at Wallace, that he is to use the United States troops to aid the State authorities simply to suppress rioting and to maintain peace and order. These were your original instructions. The Army must have nothing whatever to do with enforcing rules for the government of miners or miners' unions. That is a matter for the local authorities to deal with.

R. A. ALGER, *Secretary of War.*

ADJUTANT-GENERAL'S OFFICE,
Washington June 12, 1899.

COMMANDING GENERAL, DEPARTMENT OF COLORADO,
Denver, Colo.:

Western Labor Union report that many citizens and miners in the Cœur d'Alene district "have been thrown into a corral like so many cattle for slaughter, and have been denied the right of counsel and the actual necessaries of life."

Acting Secretary of War desires statement of facts. Any lack of comfort for these men should be remedied as soon as possible.

H. C. CORBIN, *Adjutant-General.*

WAR DEPARTMENT, *Washington, June 13, 1899.*

The GOVERNOR OF IDAHO, *Boise, Idaho:*

It has been reported to the President that the prisoners at Wardner have been denied counsel. Please wire the Department if there is any truth in the statement.

G. D. MEIKLEJOHN,
Acting Secretary of War.

BUTTE, MONT., *September 27, 1899.*

President MCKINLEY, *Washington, D. C.:*

Prisoners in the Wardner "bull pen" held under military authority have been placed on a bread-and-water diet, and their treatment has of late been so brutal that some are contemplating suicide rather than longer endure such misery. They are even refused permission to consult with their counsel. These men have now been imprisoned for nearly five months, without any charge against them, and demand and sought speedy trial, but were refused by the State court on the ground that that court did not have jurisdiction; and until they can have a trial we demand for them, in the name of justice and humanity, humane treatment at least.

EDW. BOYCE,
President of Western Federation of Miners.

WAR DEPARTMENT, *Washington, September 28, 1899.*

SIR: I beg to call your attention to your application to the President, dated April 29, 1899, for military forces of the United States to suppress insurrection in Shoshone County, in the State of Idaho, and to inquire whether the insurrection in that county has not now been suppressed so that the troops may be withdrawn and employed in other duties. In case you should deem that the time has not arrived for the entire withdrawal of the troops of the United States from that county, I beg to make the following suggestion in regard to their further service. I am informed that they are now being used by the civil authorities of the State and county as a guard for certain prisoners—upward of a hundred in number—who have been arrested by the civil authorities upon warrants issued by the civil courts, and are held under such warrants or indictments found by the grand jury of the county; that these prisoners, or most of them, have been held for a number of months, and that during the period of their detention the district court of Shoshone County, which is the court having jurisdiction to try indictments found by the grand jury, has twice convened and adjourned without bringing these prisoners to trial; that the next regular term of court will not be until January of next year, and that, in the meantime, unless something is done to prevent it, these prisoners would remain in prison under guard of the troops of the United States.

I do not wish in any way to make any suggestion relating to the administration of justice in your State or to imply that the failure to bring these prisoners to trial has not been for perfectly good reasons in accordance with the law and practice of the courts of Idaho, but I am much disinclined to have the troops of the United States continued longer in the attitude of retaining in custody the citizens of a State who have remained so long without being tried, and I feel bound to urge that if it is not convenient to bring the prisoners to a speedy trial you will substitute civil guards as their custodians and relieve the troops of the United States from further performance of that duty.

I have the honor to be, very respectfully, yours,

ELIHU ROOT, *Secretary of War.*

Hon. FRANK STEUNENBERG,
Governor of Idaho, Boise, Idaho.

Your committee, after careful examination and investigation of all the charges contained in the resolution, finds the following, in addition to the findings set out in the beginning of their report:

First. The governor of Idaho, in his efforts to establish order and enforce the laws of the State, is to be commended for his courage and fearlessness. The blind hatred excited by the mob, the consequent disturbance of public business, and the reign of lawlessness is in a fair way to be adjusted. The citizens of Idaho are to be congratulated on the removal of a dangerous cancer that had long threatened the peace and order of the State. Better ideas prevail as to the rights and duties of men in relation to the preservation of society, and this improved condition of affairs is in a great measure due to the conduct of the governor of that State.

Second. The conduct of the military in the trying hours from May 2 to the present, amid the disturbing elements of the Cœur d'Alenes, when fierce passion flamed unchecked, when no hand was raised to stay the dynamiter and the murderer, where the mob had been supreme, is a matter of earnest congratulation to the country.

The days of riot and insurrection are not pleasant for the soldiers, not a man but would have wished a different task, but he had sworn to obey, and his duty was among the rugged mountains of the Cœur d'Alenes.

The colored troops who stood watch over the prison at Wardner had stormed the hill at San Juan, and their manly bearing, courtesy, and dignity tell of the true soldier. The white troops maintained the traditional characteristics of the American soldier, and all are worthy of the commendation of the country. They bore themselves with soldierly bearing under circumstances of the greatest aggravation.

Brig. Gen. H. C. Merriam and the officers and men under him are to be commended for their wisdom, prudence, and soldierly behavior during the turbulent days of riot and insurrection in Idaho, and the result of this investigation is a complete exoneration and vindication of their conduct.

The committee recommends the adoption of the following resolution:

"*Resolved*, That the charges set forth in House resolution No. 31 have not been sustained."

VIEWS OF THE MINORITY.

On the 29th day of April, 1899, from 800 to 1,000 men went to the Bunker Hill and Sullivan mine, situate near Wardner, in Shoshone County, Idaho, and blew up the concentrator of that mine.

During the progress of the commission of this crime two men were murdered by those engaged in perpetrating this outrage; the citizens of Wardner were terrorized, and the officers of the law were powerless to prevent the crimes and outrages which took place on that day. This crime can not be too severely condemned. Nothing can extenuate it, and its authors deserve the severest punishment which the law can mete out to them.

After the crime had been committed the perpetrators of it dispersed. According to the evidence before the committee, three or four hundred of those engaged in it fled from the county of Shoshone into the State of Montana and into British Columbia. This evidence is reinforced by a telegram of General Merriam sent to the Adjutant-General of the Army on May 4, 1899:

WARDNER, IDAHO, *May 4, 1899.*

ADJUTANT-GENERAL ARMY, *Washington, D. C.:*

Inquest still in progress with closed doors. One hundred and twenty-eight arrests made by State officials under military support. No signs of resistance, but indications are most leaders of mob have escaped, going east or west into Montana and Washington; others hidden in the mountains. Sheriff at Thompsons Falls, Mont., reports many arriving on foot over mountain trails. Governors Idaho and Montana corresponding for arrests in Montana. Troops in position to do all that is possible. There is now no sign of organized resistance.

MERRIAM, *Brigadier-General.*

These men escaped before May 4, 1899, and after the 29th of April, 1899, there was absolutely no resistance by anyone to the civil authorities of the State of Idaho. It appears from the evidence that the civil authorities of Shoshone County at once began to arrest those who were suspected of being engaged in the commission of the crime of April 29, 1899, and were so engaged when their authority was suspended by the action of the governor of Idaho, and by the sending of troops of the United States into Shoshone County.

The governor of Idaho, acting upon telegrams and advices sent him from the scene of the trouble, called upon the President of the United States for troops to aid him in suppressing what he called an insurrection. The President responded to this call and General Merriam, of the Army, was placed in command of the troops and directed to proceed to Shoshone County. Your committee believes that the governor of Idaho had the right to call upon the President for troops, and that the President was authorized to respond to said call by virtue of article 4, section 4, of the Constitution of the United States; but your committee is of opinion that the troops so sent to the State of Idaho continued to be under the control of the President of the United States, and that the military commander in command of said troops could only use them in aid of the civil authorities of the State to preserve peace and order, and to prevent resistance being made by lawless persons to the process of the courts and the proper civil authorities of the State.

The telegram of the Secretary of War dated May 31 clearly defines the duty of the commander of the troops, and shows beyond controversy that the soldiers of the United States should not be used unless it was necessary "to aid the State authorities to suppress rioting and to maintain peace and order."

WASHINGTON, D. C., *May 31.*

Brigadier-General MERRIMAN,
Commanding Department of Colorado, Denver, Colo.:

You will instruct Major Smith, commanding at Wallace, that he is to use the United States troops to aid the State authorities simply to suppress rioting and to maintain peace and order. These were your original instructions. The Army must have nothing whatever to do with enforcing rules for the government of miners or miners' unions. That is a matter for the local authorities to deal with.

R. A. ALGER, *Secretary of War.*

As a matter of fact there never was any rioting in Shoshone County after the 29th of April, 1899; peace and order prevailed there when the troops arrived. No resistance whatever was made to the serving of process or to any action taken or sought to be taken by the State authorities. The courts were open, a coroner's inquest was being held, a grand jury was very soon empaneled, no justice of the peace was interfered with, no sheriff or constable was resisted by anybody. The State authorities were exercising their functions, and have so continued to exercise them from April 30, 1899, down to the present time. Such being the facts, it is most extraordinary that United States soldiers should have been kept for over a year in Shoshone County, Idaho, overawing the civil authorities, used with the consent of the President of the United States in upholding a most tyrannical course of conduct pursued by the governor of Idaho to prevent men, charged with no crime, from earning their daily bread.

The evidence clearly shows that General Merriam totally misunderstood his duties, and was ignorant of the first principles of the laws of the land. It may be, and probably is, true that he intended to do what he thought was right, but his conduct displayed gross ignorance of law and an utter indifference to the rights and liberties of the citizens. General Merriam arrived at Wardner on May 3, after some of his troops, which troops had already arrested a large number of men without semblance of warrant, and at the suggestion of one Bartlett Sinclair, the civil representative of the governor of Idaho. After General Merriam's arrival at Wardner, upon the suggestion of Mr. Sinclair, he sent about 150 soldiers to the town of Burke in Shoshone County (May 3); these soldiers were accompanied by four so-called deputies appointed by Sinclair verbally; these deputies and soldiers, upon their arrival at Burke, found no disturbance there, no rioting, no breach of the peace; the population of the town was pursuing its usual avocations; there was not a suspicion of resistance to the State authorities, and yet these soldiers and deputies proceeded to arrest, and did arrest and put under guard without warrant, the entire male population of that town, consisting of about 300 persons; among them were clergymen, school teachers, druggists, merchants, etc., they were given no hearing; it is true that some of them were released in an hour or two, but that release did not and could not excuse the outrage thus put upon innocent men and American citizens.

But the mass of these people were placed upon cars and taken to Wardner, and there imprisoned. Not one of them, so far as the evidence discloses, was ever tried for any offense, although many of them were held in prison for months. Such conduct can not be too severely condemned. It was an outrage upon the liberty of the citizen which has no parallel in the annals of this country. It is no excuse to say that General Merriam was requested to do this thing by the representative of the governor. It was his duty, as the commander of the troops, to know the law, and the law was and is that when a military commander is sent into a State to aid the civil authorities thereof he can not act unless those authorities are being resisted, and even if they are being resisted the civil authorities must be armed with proper and legal warrants before the military can aid them in the execution of their duties.

The general commanding the troops exceeded his authority, and was guilty of a gross violation of law when he sent a detachment of troops into the State of Montana for the purpose of arresting supposed fugitives from justice from Idaho. It can not be contended for a moment that General Merriam had any authority for this action. It is true four so-called deputies accompanied the detachment of soldiers, but the most ignorant citizen of the Republic knows that a deputy of one State has no authority to arrest citizens in another State unless clothed with authority given him by the proper authorities of the State into which he goes. The result of this invasion by General Merriam into the State of Montana was the arrest of a citizen of Montana by Lieutenant Lyon at St. Regis, Mont. This man, without warrant of law, without even a hearing before a military court, was taken from his own State into the State of Idaho and thrown into prison. It is true that he was only held for a few days and then released, but that does not excuse the outrageous treatment to which he was subjected. It only serves to emphasize the inexcusable conduct of Lieutenant Lyon, acting under the orders of General Merriam, in arresting and imprisoning an entirely innocent man, taking him from his home and giving him no opportunity to show his innocence. The conduct of General Merriam in this matter is sought to be excused by him on the ground that the governor of Montana authorized the arrest of suspects in Montana without formal extradition papers; but this contention can not be sustained. The governor of Montana had no such power, and General Merriam should have known it.

Another instance of flagrant violation of law was the conduct of Lieutenant Lyon, acting under orders from his superior, in forcing men to work in the Tiger-Poorman mine by threats of violence. This conduct was inexcusable. These men were freemen. Their labor was their own, and no conditions justified Lieutenant Lyon in forcing them to work against their will. The excuse that the mine would have been destroyed is not tenable. If Lieutenant Lyon had seen fit he might have used his soldiers for the purpose of pumping the water out of the mine, but he exceeded his authority and violated the liberty of the citizen when he forced citizens to work against their will.

The suppression by Major Smith, of the Army, of the Mullan Mirror, a newspaper published at Mullan, in Shoshone County, can not be defended. It was a gross violation of law wholly unjustified by any evidence which was given before this committee. The editor of the paper was put in jail without a warrant, kept there a long time without a trial and with no charges ever preferred against him, and his property destroyed and never returned to him.

The "permit system," approved by General Merriam, and kept in operation to this day by the presence of the military forces of the United States, is an outrageous violation of the laws of Idaho and of the laws of the United States. Under this system no man is permitted to work in the mines of Shoshone County unless he obtains a permit from Dr. France, a representative of the governor of Idaho. The evidence before the committee is that this system could not be maintained without the aid and presence of the military forces of the United States. Under this system the miners of the Cœur d'Alene are absolutely under the control of one man, and their daily bread can only be earned at the will of an irresponsible officer, whose duties are defined in no statute, and from whose acts and edicts there is no appeal. Such a condition of affairs has never before existed in any community in the United States, and that the Army of this country should be used for such a purpose is a disgrace to our civilization and a grave reflection upon those who permit such abuses to exist.

To sum up, the undersigned are satisfied from the evidence adduced before the committee that General Merriam was wholly mistaken as to his powers and duties; that he was ignorant of the laws of his country; that he failed to distinguish the difference between military law and martial law, and that his conduct has resulted in the gravest injuries to the liberty of the citizen and the rights of individuals. Innocent men have been kept in prison for months without a trial, and have been finally discharged without any charges being preferred against them.

The undersigned, to sustain the propositions of law above insisted upon, cite the following authorities: Ex parte Milligan, 4 Wallace, 15 Federal Cases, case No. 8673; Cooley's Constitutional Law passim; Luther *v.* Borden, 1 Howard, Federal Cases, No. 9605.

We are aware that General Merriam defends his conduct in Shoshone County on the ground that he was carrying out the wishes and requests of Mr. Bartlett Sinclair, the civil representative of the governor of Idaho. It therefore becomes necessary to inquire into the legality of the appointment of Bartlett Sinclair, and to determine whether he was such State authority as General Merriam should have aided. It will not be denied that it was the duty of the commanding general to ascertain for himself and determine rightly who were the State authorities of Idaho whom it was his duty to aid. The State authorities of Idaho, those meant by the Secretary of War, were undoubtedly the legal State authorities, those constituted by the laws of the State. If, therefore, the governor of Idaho exceeded his powers in appointing what he called his representatives, it was the duty of the commanding general to ignore the requests and wishes of any illegal representative of the governor. It was equally his duty to refuse to grant any requests of the governor himself unless they were valid and legal requests. Thus any request to arrest any citizen of the State without a warrant should have been ignored, because the military could only properly aid the State authorities when they themselves were acting in pursuance of law.

Now, as to the appointment of Bartlett Sinclair, it was plainly illegal, and not justified by any law or statute of Idaho. There are statutes of Idaho (secs. 7405–7407) which authorize the governor to appoint a civil officer to command State troops when called out to suppress an insurrection; but in this case there were no State troops; and it will not be contended for a moment that the governor of Idaho could appoint a civil officer to command United States troops, or to act in conjunction with them. There is no law of Idaho which authorizes the governor to appoint any civil officer and to confer upon him the powers of a dictator, with the right to arrest men indiscriminately without a warrant, to appoint deputies, and to discharge all the functions of government. The governor has not this absolute power himself, and surely he can not confer it upon another. The contention that this can be done under martial law will not hold in this case, because, while martial law was proclaimed, it, as a matter of fact, did not exist. It could not exist, because the courts were open and every State officer was discharging his functions without let or hindrance. A coroner's inquest, a grand jury, and all the machinery necessary to bringing criminals to justice had full sway. There was no disturbance of the peace, no destruction of property, no resistance to State authority.

At one time or another there were over 1,100 men in the prison at Wardner, known as the "bull pen." They were not tried; they were not charged with any crime, and they were held and guarded by the United States troops. It was the duty of the military commander on the ground and of the Commander in Chief of the Army to inquire into the causes and reasons for the detention of these men. No such inquiry was ever made, and this large number of American citizens was imprisoned without trial, and it is vain for the commanding general and his superior officer, the President of the United States, to justify this outrage on liberty by asserting that these citizens of the United States were held by the State authorities of Idaho.

It may be proper to state that the evidence discloses a conspiracy on the part of the officers of the Bunker Hill and Sullivan mine, and of those who sympathize with them, to drive from Shoshone County all union miners by the device of the "permit system," which system, it is admitted, can only be maintained by the use of United States soldiers.

There is a specific statute in the State of Idaho against employers of labor discriminating against employees by reason of their membership in or affiliation with any labor union, and when the Bunker Hill and Sullivan company gave notice in April that no union miner should remain in their employ, they violated the law of the land just as much as the men did who blew up the concentrator.

There is another statute in the State of Idaho providing specifically for arbitration in case of difficulty between employer and employee, and when the managers of the Bunker Hill and Sullivan refused to arbitrate, they were just as much guilty of breaking the law of the land as were the men who blew up the concentrator. In other words, the Bunker Hill and Sullivan Mining Company stood alone as lawbreakers in two specific instances before their employees and other employees of that community were guilty of the destruction of property.

Again, it is but fair to suggest that had the mine owners been law-abiding citizens themselves, and complied with the request of the governor for arbitration, or complied with the statute which prohibited discrimination against men belonging to labor unions, there would have been no violations on the part of the employees. A fair hearing of both parties to the difficulties in the Cœur d'Alene district forces the conclusion that those who provoked the crime of the 29th of April, 1899, were no less responsible for it, inasmuch as they were lawbreakers in two instances prior thereto, than were the men who actually committed the malicious destruction of property.

There is another phase of this serious and important manifestation of the social and military conditions of the country which must not be overlooked. Under the constitution and statutes of the State of Idaho, the governor is authorized in cases of emergency to call the legislature in session on twenty days' notice. In this age of civilization, when a man is supposed to be free from arrest without due process of law, and free from imprisonment until he has been found guilty by a jury of his peers, neither the governor of the State of Idaho nor the President of the United States was justified in brushing away the constitution and statutes of the State of Idaho and the Constitution of the United States and establishing the arbitrary, despotic, and tyrannical imprisonment of men merely at the whim or caprice of an alleged representative or agent stationed in the Cœur d'Alene district. Common sense and common decency would have suggested to the governor of the State, as well as the President of the United States, that the legislature of Idaho should have been called at once in session, and their deliberations and decisions should have controlled the rights and the liberties of these thousands of men, women, and children in the Cœur d'Alene district.

It appears from the evidence taken that at no time from and after the morning of the 30th of April, 1899, has there been even the slightest resistance offered to any civil officer, nor has there at any time been wanting the services of county commissioners, a sheriff, a prosecuting attorney, a jury, and a judge, all selected substantially at the suggestion of the governor after conference and close communion with the managers of the Bunker Hill and Sullivan Mining Company. Fairness and impartiality on the part of the governor would have suggested to him the calling of the legislature, that they might, in their collective wisdom, decide what was necessary and for the best interests of the State of Idaho; and prudence and a respectful concern on the part of the President of the United States for the rights of the labor unions of that district ought to have suggested to him that he demand of the governor that rather than resort to his arbitrary and despotic will he should call the legislature in session and let them determine what course should be pursued; and the President should have notified the governor that unless the ironclad and blacklisting system against the members of labor unions was abolished the United States troops would be immediately withdrawn. There appears in the evidence nowhere any necessity or justification for tolerating the use of the troops to enforce the permit system.

Section 4, article 4, of the Constitution of the United States, under which we think the President was authorized to send the troops at the call of the governor of Idaho, not only provides that the President shall protect each State against domestic violence on the application of the legislature, or the executive when the legislature can not be convened, but it also provides that the United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and we hold that the arbitrary and tyrannical power exercised in establishing the blacklisting system of union labor was not a republican form of government, nor even a civilized form of government, and we hold, as we believe all self-respecting citizens of America will hold, that the President of the United States is not and was not justified in sending the troops into the State of Idaho and leaving them indefinitely, or forever, in that jurisdiction without exercising any discretion or control over them.

We contend that the President of the United States can not relieve himself of responsibility nor for a day divorce himself from the deepest concern as to what the troops of which he is commander in chief are doing and are being used for. Neither law nor order, nor justice, nor equity, nor decency, nor humanity would tolerate the despotic system which perpetrated upon thousands of men, women, and children the brutality of the bull pen and the blacklisting system which has driven some 1,500 members of the miners' unions, together with their wives and children, from Shoshone County and denied them the privilege of earning a livelihood among their neighbors and their friends and has thrown them upon the world as outcasts and tramps without even having so much as an affidavit or an indictment against them, much less a conviction for any offense, even of the petty degree of a misdemeanor. Let it be confessed with shame and humiliation that our Chief Executive and our army officials have become so callous to the rights and liberties of labor that these things could have been perpetrated in this year of our Lord 1899 and 1900.

The undersigned recommend the adoption of the following resolution:

"*Resolved by the House of Representatives*, That the conduct of the President and of the military forces of the United States in Shoshone County, Idaho, has been reprehensible, violative of the liberty of the citizen, and totally unwarranted by the laws and Constitution of the United States."

WM. SULZER.
JOHN J. LENTZ.
N. N. COX.
JAMES HAY.
THOS. M. JETT.
JAS. L. SLAYDEN.
ROBT. F. BROUSSARD.